

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 461

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION, UNITED STATES STEEL CORPORATION AND UNITED STATES STEEL CORPORATION OF DELEWARE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

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In the District Court of the United States for the  
District of Delaware

Civil No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

v.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION, AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

*Complaint*

Filed Feb. 24, 1947

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants.

JURISDICTION AND VENUE

1. This complaint is authorized by section 4 of the act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and is brought to enjoin alleged violations of sections 1 and 2 of said Act. Venue lies in this district since Columbia Steel Company and United States Steel Corporation of Delaware are inhabitants of the State of Delaware.

8

DEFENDANTS.

2. The following named corporations are hereby made defendants herein:

Corporation.	State of incorporation	Referred to herein as—
Columbia Steel Company	Delaware	Columbia.
Consolidated Steel Corporation	California	Consolidated.
United States Steel Corporation	New Jersey	U. S. Steel.
United States Steel Corporation of Delaware	Delaware	U. S. Steel of Delaware.

3. Columbia and U. S. Steel of Delaware are wholly-owned and controlled subsidiaries of U. S. Steel.

## TRADE AND COMMERCE INVOLVED

4. Steel plates, sheets, shapes, and bars, hereinafter referred to as "rolled steel products," are raw materials used in the production of steel ships, buildings, bridges, boilers, pipe-lines, and similar finished products, hereinafter referred to as "fabricated steel products."

5. U. S. Steel, including its wholly-owned subsidiary corporations, is the largest producer and seller of both rolled steel products and fabricated steel products in the United States. It sells in interstate commerce, through such subsidiaries, substantial quantities of rolled steel products to steel fabricators, including Consolidated, in the States of Arizona, California, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington, in competition with other producers of rolled steel products. A substantial part of the rolled steel products sold by U. S. Steel in said States is produced and sold by Columbia. A substantial part of the total fabricated steel products sold in said States is sold by U. S. Steel through Columbia and other wholly-owned subsidiaries.

6. U. S. Steel of Delaware renders technical assistance to all of the subsidiaries of U. S. Steel engaged in rolling and fabricating steel products and controls their business policies.

7. Consolidated is engaged, directly and through subsidiary corporations, in the fabrication of finished steel products, which it sells principally in the aforesaid States, hereinafter referred to as the "Consolidated market." It owns and operates plants at Los Angeles, Vernon, Fresno, Berkeley, and Taft, California, Phoenix, Arizona, and Orange, Texas. Its net sales of for the year ending August 31, 1946, exceeded ninety-one million dollars. Consolidated is believed to be the largest fabricator of steel products for sale in the Consolidated market other than fabricators which are owned or controlled by producers of rolled steel products.

## OFFENSES CHARGED

8. On December 14, 1946, Columbia made an agreement with Consolidated and all of Consolidated's wholly-owned subsidiaries engaged in fabricating or selling steel products by which the entire fixed assets, inventories, and good will of Consolidated and said subsidiaries, other than certain cash and other current items, are to be transferred to Columbia for a price exceeding eight million dollars. A copy of said agreement is attached hereto

and expressly made a part hereof as Exhibit "A". Said agreement was approved by the Board of Directors of Consolidated and by the Board of Directors of Columbia

on December 14, 1946. Said agreement was negotiated by Columbia with the express approval and assistance of U. S. Steel and U. S. Steel of Delaware. Said agreement has now become partially effective by its express terms, although it may not be consummated until after approval by the stockholders of Consolidated. Plaintiff is informed and believes, and upon such information and belief alleges, that unless enjoined herein the defendants may proceed to consummate said agreement.

9. Upon consummation of said agreement, U. S. Steel proposes to supply exclusively through its wholly-owned subsidiaries, the entire demand of the acquired business for rolled steel products, except for such special items as they do not produce. One purpose of said purchase is to supply an assured outlet for a substantial quantity of rolled steel products produced by Columbia. Upon consummation of said purchase the business now owned by Consolidated and its subsidiaries will be permanently eliminated as a substantial market for the rolled steel products of producers other than Columbia and other wholly-owned subsidiaries of U. S. Steel. Said business now owned by Consolidated will also be permanently eliminated as a competitor with U. S. Steel and Columbia in the manufacture and sale of fabricated steel products in the Consolidated market.

10. The necessary effect of said agreement is to eliminate substantial competition in the sale of rolled steel products and the manufacture and sale of fabricated steel products and said agreement is therefore in itself an unreasonable restraint of trade and commerce in violation of section 1 of the Sherman Act.

11. In making said agreement Columbia, U. S. Steel, and U. S. Steel of Delaware, have concertedly attempted to monopolize the production and sale of fabricated steel products in the Consolidated market in violation of sections 1 and 2 of the Sherman Act.

#### RELIEF SOUGHT

Wherefore, plaintiff prays:

1. That a temporary restraining order issue enjoining the defendants from taking any action to consummate said agreement pending final adjudication of the merits of this complaint.

2. That said purchase agreement between Columbia and Consolidated and its subsidiaries be adjudged and decreed to be in violation of sections 1 and 2 of the Sherman Act and therefore void and unenforceable.

3. That the defendants and all persons acting on their behalf be perpetually enjoined from consummating or taking any further

steps to consummate the said agreement or to restrict their competition in any similar manner.

4. That the defendants, U. S. Steel, U. S. Steel of Delaware, and Columbia be perpetually enjoined from any further attempts to monopolize the production and sale of fabricated steel products in the Consolidated market.

12 5. That the plaintiff have such other and further and different relief as the case may require and the court may deem just and proper in the premises.

6. That the plaintiff recover its taxable costs.

ROBERT L. WRIGHT,

*Special Assistant to the Attorney General.*

JAMES R. BROWNING,

*Special Attorney.*

TOM C. CLARK,

*Attorney General.*

WENDELL BERGE,

*Assistant Attorney General.*

GEORGE B. HADDOCK,

*Special Assistant to the Attorney General.*

JOHN J. MORRIS, Jr.,

*United States Attorney.*

[Duly sworn to by Harold H. Wein; jurat omitted in printing.]

54 In the District Court of the United States

*Answer of Defendant Consolidated Steel Corporation*

The defendant Consolidated Steel Corporation, answering the complaint on file herein, denies, admits and avers as follows:

#### FIRST DEFENSE

Avers that the complaint fails to state a claim against the defendant upon which relief can be granted.

#### SECOND DEFENSE

1. Denies that this defendant has violated any of the provisions, including particularly those of Sections 1 and 2, of the Sherman Anti-Trust Act.

55 2. Admits the averments of paragraph 2 of the complaint.

3. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3 of the complaint.

4. Admits that steel plates, sheets, shapes and bars are rolled steel products; admits that steel plates, sheets, shapes and bars are raw materials used by steel fabricators in the production of steel ships, buildings, boilers, welded pipe for pipe lines, and other similar and dissimilar fabricated steel products, and parts thereof. Except as herein specifically admitted, denies the averments of paragraph 4 of the complaint and particularly denies that fabricated steel products can be properly designated or deemed as finished steel products.

5. Admits that certain subsidiaries of U. S. Steel sell in interstate commerce rolled steel products to steel fabricators, including Consolidated, in the states of Arizona, California and Texas in competition with other producers of rolled steel products; denies that such subsidiaries sell rolled steel products to Consolidated or its subsidiaries in the states of Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Utah, or Washington; avers that it is without knowledge or information sufficient to form a belief as to the truth of the averments that are not hereinabove admitted or denied.

6. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6 of the complaint.

7. Admits that Consolidated is engaged, directly and through subsidiary corporations, in the fabrication of steel products, both finished and unfinished, and avers that it sells them principally in the state of California and to a lesser extent in the other  
56 states referred to in the complaint as the "Consolidated market"; admits that this defendant owns and, either itself or through subsidiary corporations, operates plants at Los Angeles, Vernon, Fresno, Berkeley, and Taft, California; Phoenix, Arizona; and Orange, Texas; admits that the work performed on contracts by it and its subsidiaries (referred to in the complaint as "net sales") for the year ending August 31, 1946, exceeded \$91,000,000, but avers that, of said total work, approximately \$77,000,000 represented work performed for the United States Government, or agencies thereof, by Consolidated and its subsidiaries in the construction of war or defense material, and that only approximately \$14,000,000 consisted of other work of the character normally and customarily done by Consolidated and its subsidiaries; avers that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Consolidated is believed to be the largest fabricator of steel products for sale in the area designated by the plaintiff as the "Consolidated market," other than fabricators which are owned or controlled by producers of rolled steel products.

8. Avers that Columbia made an agreement dated as of December 14, 1946, with Consolidated and all of Consolidated's wholly owned subsidiaries engaged in fabricating or selling steel products; that said agreement was approved by the Board of Directors of Columbia on December 13, 1946, and by the Board of Directors of Consolidated on December 16, 1946; that on January 18, 1947, the said agreement was amended in certain particulars; that Exhibit "A" annexed to the complaint is a correct copy of said agreement as amended on January 18, 1947; that said agreement was made with the approval and assistance of U. S. Steel and U. S. Steel of Delaware; that on March 31, 1947, the defendants agreed to amend further the agreement of December 14, 1946, in the manner and upon the terms and conditions set forth in Exhibit "1" attached hereto and made a part hereof and reference is made to said Exhibit "A" and to Exhibit "1" for a correct statement of the terms and conditions thereof; avers that the closing of the transaction set forth in said agreement, as amended, will not take place prior to the entry of final judgment by the trial court in this action, or until this action shall have been dismissed, or until the entry of an order by this court relieving the defendants herein from any obligation to refrain from closing the said transaction. Except as herein averred or explained, this defendant denies the allegations of paragraph 8 of the complaint.

9. Upon information and belief, avers that upon consummation of said agreement the subsidiaries of U. S. Steel will supply to the extent practicable and as such products are available the entire demand of the acquired business for rolled steel products, except for such items as they do not produce; that one major purpose of said purchase is to supply an outlet for the products of the Geneva Steel plant at Geneva, Utah; denies that Consolidated is a substantial market for the rolled steel products of producers other than U. S. Steel subsidiaries; denies that the business now owned by Consolidated is competitive with subsidiaries of U. S. Steel, except to a negligible extent, and avers that to the negligible extent that fabricated steel products now produced and sold by Consolidated are competitive with fabricated steel products produced and sold by U. S. Steel subsidiaries, such negligible competition will be eliminated, but denies that such competition is substantial or that the elimination thereof is unlawful. Except as herein averred, denied or explained, defendant denies the allegations of paragraph 9 of the complaint.

10. Denies the allegations contained in paragraph 10 of the complaint.

11. Upon information and belief, denies the allegations contained in paragraph 11 of the complaint.

58 Wherefore, this defendant prays that the plaintiff be denied any of the relief prayed for by it in the complaint; that this action be dismissed, and that this defendant have and recover its taxable costs herein.

Dated April 9, 1947.

(S) AARON FINGER,  
*Attorney for Consolidated  
Steel Corporation.*

59 [Duly sworn to by John M. Robinson, Jr.; jurat omitted in printing.]

60 Exhibit "1" to answer

The undersigned hereby agree to execute and deliver the attached extension agreement, to be dated and made effective as of March 31, 1947, within five days after the entry of an order to be made with reference to the Government's motion for a preliminary injunction in the action entitled "United States vs. Columbia Steel Company, et al." in the District Court of the United States for the District of Delaware, provided such execution and delivery are not prohibited by the Order.

Dated March 31, 1947.

By (S) CONSOLIDATED STEEL CORPORATION,  
A. G. ROACH, *President.*  
(S) JOHN M. ROBINSON, Jr., *Secretary.*

[SEAL]

Attest:

(S) O. I. ALBERA, *Assistant Secretary.*

WESTERN PIPE & STEEL COMPANY  
OF CALIFORNIA,

[SEAL]

By (S) L. N. SLATER, *President.*

Attest:

(S) L. W. COUTURE, *Asst. Secretary.*

61

THE STEEL TANK AND PIPE  
COMPANY OF CALIFORNIA,

[SEAL]

By (S) F. S. HOWARD, *Vice President.*

Attest:

(S) ALFRED WRIGHT, *Assistant Secretary.*

CONSOLIDATED SHIPYARDS, INC.,

[SEAL]

By (S) A. G. ROACH, *President.*

Attest:

(S) E. H. LeBRETON, *Assistant Secretary.*

CONSOLIDATED STEEL CORPORATION  
OF TEXAS,

[SEAL]

By (S) H. C. CRANFILL, *Vice President.*

Attest:

(S) O. I. ALBERA, *Assistant Secretary.*

COLUMBIA STEEL COMPANY,

[SEAL]

By (S) W. A. ROSS, *President.*

Attest:

(S) THOMAS ASHBY, *Secretary.*

62 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Steel Corporation, a corporation, and O. I. Albera, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER,

*Notary Public.*

My Commission Expires February 4th, 1950.

63 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared L. N. Slater, personally known to me to be the President of Western Pipe & Steel Company of California, a corporation, and L. W. Couture, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER,  
Notary Public.

My Commission Expires February 4th, 1950.

64 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared F. S. Howard, personally known to me to be the Vice President of The Steel Tank and Pipe Company of California, a corporation, and Alfrd Wright, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act; and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER,  
Notary Public.

My Commission Expires February 4th, 1950.

65 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this 31th day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Shipyards, Inc., a corporation, and E. H. LeBreton, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER,  
Notary Public.

My Commission Expires February 4th, 1950.

66 STATE OF CALIFORNIA,  
*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared H. C. Cranfill, personally known to me to be the Vice President of Consolidated Steel Corporation of Texas, a corporation, and O. I. Albera, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER,  
Notary Public.

My Commission Expires February 4th, 1950.

67 STATE OF CALIFORNIA,  
*City and County of San Francisco, ss:*

On this 3rd day of April 1947, before me Hazel E. Thompson, a Notary Public in and for said City and County and State, personally appeared W. A. Ross, personally known to me to be the President of Columbia Steel Company, a corporation, and Thomas Ashby, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) HAZEL E. THOMPSON,  
Notary Public.

My Commission Expires October 14, 1950.

68 This Agreement made and entered into as of the — day of March 1947, by and between (1) Consolidated Steel Corporation, a corporation organized and existing under the laws of the State of California, Western Pipe & Steel Company of California, a corporation organized and existing under the laws of the State of California, The Steel Tank and Pipe Company of California, a corporation organized and existing under the laws of the State of California, Consolidated Shipyards, Inc., a corporation organized and existing under the laws of the State of California, and Consolidated Steel Corporation of Texas, a corporation organized and existing under the laws of the State of Texas, (which said five corporations are hereinafter sometimes collectively referred to as the "Sellers"), and (2) Columbia Steel Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Buyer"), witnesseth:

Whereas, the parties hereto entered into an agreement dated as of December 14, 1946, which was amended on January 18, 1947, (said agreement as so amended being hereinafter sometimes referred to as "said agreement"), whereby the Sellers agreed to sell, subject to the approval of their respective shareholders, and the Buyer agreed to purchase, certain of the business, property and assets of the Sellers, upon the terms and conditions therein set out; and

Whereas, the Department of Justice has filed an action to prevent the consummation of said sale and purchase; and

Whereas, counsel for the Sellers and counsel for the Buyer have advised their respective clients that, in their opinion, the transaction is entirely lawful and not within the condemnation of the Sherman Act; and

69 Whereas, the parties hereto have agreed that it is advisable to postpone the closing of the transaction and, accordingly, that it is desirable to amend certain of the provisions of, and to supplement said agreement in the manner and to the extent herein provided:

Now, therefore, in consideration of the premises and of the mutual agreements of the parties hereto herein contained, it is hereby agreed as follows:

1. The closing of the transaction covered by said agreement will be governed by the following provisions (A), (B), (C), (D) and (E) of this Paragraph 1:

(A) If a judgment, decree or order adjudicating that the transaction is not within the condemnation of the Sherman Act or that its consummation is not subject to being enjoined or restrained under said Act shall become final on or prior to December 31, 1948, or if any suit or other proceeding which may be brought under

the Sherman Act to enjoin the consummation of the transaction or to determine its lawfulness is dismissed or otherwise terminated prior to said date with prejudice to the party bringing the same, the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date on which such adjudication shall become final or after the date of such dismissal or termination, or at such other time as shall be mutually agreed upon.

(B) If prior to December 31, 1948, the parties hereto shall agree in writing that the question of the lawfulness of the transaction under the Sherman Act has been disposed of to their mutual satisfaction or that there is no deterrent to the closing of the transaction, then the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date of such agreement, or such other time as shall be provided therein or as shall be otherwise agreed upon between the parties hereto.

(C) If none of the events set forth in the foregoing subdivisions (A) and (B) upon which the transactions shall proceed to closing shall occur prior to December 31, 1948, then, either the Sellers or the Buyer shall have the right to terminate said agreement by giving to the other party or parties written notice of termination and upon the giving of such notice said agreement shall terminate and shall be deemed cancelled in its entirety effective as of December 31, 1948, with the same force and effect as if it had never been entered into, and none of the parties thereto shall have any obligation or liability thereunder or by reason thereof, or by reason of any action taken thereunder or in relation thereto against any of the other parties thereto.

(D) Irrespective of the provisions of the foregoing subdivisions (A), (B), and (C), if the parties hereto shall at any time prior to January 1, 1949, or thereafter, determine that changed circumstances or other considerations justify the extension of the date of December 31, 1948, referred to in said subdivisions (A), (B), and (C), or the taking of action with respect to the closing of the transaction or in relation to said agreement differing from the action provided for in said subdivisions (A), (B), and (C), and, in the light of such changed circumstances or other considerations, shall mutually agree upon the terms and conditions of a further agreement to be entered into, such further agreement shall supersede the provisions of said subdivisions (A), (B), and (C) to the extent provided for in such further agreement.

(E) Notwithstanding the provisions of the foregoing subdivisions (A), (B), (C), and (D), the closing shall not take place prior to the entry of final judgment by the trial court in the action heretofore commenced by the Department of Justice, or until such action shall have been dismissed, or until

the entry of an order by the court relieving the defendants in said action from any obligation to refrain from closing the transaction.

2. Said agreement is hereby amended as hereinafter in this Paragraph 2 provided:

(a) The last paragraph (page 6) of Paragraph 2 is amended to read as follows:

"If by agreement of the parties the day of the closing shall be accelerated or postponed, the respective times for the performance of the obligations of the parties hereto to be otherwise performed on or with relation to specific dates or during specified periods, or otherwise, shall be accelerated or postponed to the same extent that the closing date is accelerated or postponed, except as may be otherwise mutually agreed, and except that the requirements of Paragraph 21 of said agreement shall be deemed to have been complied with by the Sellers if they shall be complied with at any time prior to the closing of the transaction."

(b) Subdivision (1) of Paragraph 3 (pages 6-7) is amended to read as follows:

"(1) For fixed assets—\$8,293,319.

(a) increased by the full amount of any properly capitalizable expenditures made since August 31, 1946, and

(b) (i) as to items, other than land, which have been or may be acquired after August 31, 1946, and which have been or may be disposed of, abandoned or dismantled on or before the closing day, decreased by one hundred percent of the depreciated book value thereof at the date of the disposition, abandonment or dismantlement stated on the books of the Sellers in accordance with their established methods of accounting;

(ii) as to items, other than land, which were acquired on or prior to August 31, 1946, and which have been or which may be disposed of, abandoned or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the original cost of any fixed assets other than those acquired from Old Western Pipe, and as to items acquired from Old Western Pipe which have been or which may be disposed of, abandoned or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the undepreciated book value thereof as shown by the books of Old Western Pipe at December 15, 1945—less, in each case, agreed salvage value of assets abandoned or dismantled;

(iii) decreased for depreciation, since August 31, 1946, in the case of assets other than those acquired from Old Western Pipe, stated on the books of the Sellers in accordance with their established methods of accounting;

(iv) decreased in an amount equal to the amount of depreciation that would have been accrued on the books of Old Western

Pipe from August 31, 1946, to and including the day of closing, on the assets acquired by Consolidated of California from Old Western Pipe if such assets had continued to be held by Old Western Pipe to and including the day of closing and Old Western Pipe's established rates and methods of depreciation on and prior to

December 15, 1945, had been continued to and including the day of closing, provided, however, that in the case of any such asset disposed of, abandoned or dismantled the amount of such decrease shall be limited to the depreciation that would have been taken thereon prior to the time of the disposition, abandonment or dismantlement thereof;

(v) as to all land reflected on Exhibit A or on the books of Old Western Pipe on December 15, 1945 (and not disposed of prior to August 31, 1946), not owned by the Sellers on the day of closing, decreased by one hundred per cent of the book value thereof as so reflected."

(c) The provision on page 9 relating to the time for prepayments is amended to read as follows:

"For the assets referred to in subdivision (6) (a) within thirty days after the day of closing or within ten (10) days after the amounts of such prepayments are known, whichever is later;"

(d) The provision on page 10 relating to an advance of \$5,000,000 is amended to read as follows:

"If the Sellers shall so request, the Buyer will at the closing deliver to the Sellers the sum of \$5,000,000, or seventy-five percent of the aggregate book values (as shown on the books of the Sellers as of the last day of the last month for which such figures are available) of the assets referred to in subdivisions (2) and (3) (a) of the transfer assets, whichever is less, as an advance payment to be applied first to the purchase price of the assets referred to in subdivision (2), and any balance remaining shall be applied to the purchase price of the assets referred to in subdivision (3) (a)."

(e) The eighth line of the paragraph on page 10 having reference to the facilities installed at the Maywood plant of the Sellers to be used in the performance of pipe line contracts is amended to read as follows: "be paid for said facilities and such other pipe line facilities as may be installed by the Sellers, or any of them, prior to the closing, fifty per cent of all expenditures with respect to all such facilities."

(f) Paragraph 4, page 11 is amended by adding at the end thereof the following: "and the Sellers shall reimburse the Buyer the cost of the performance by the Buyer of any of the obligations of the Sellers, or any of them, under each of such contracts for which reimbursement is not provided by such contract."

(g) Subdivisions (b), (c), (d), and (f) (pages 16 and 17) of Paragraph 16 are amended to read as follows:

"(b) will advise the Buyer of any development in the Sellers' business or affairs which is of a character which may seriously and adversely affect the transfer assets or their operation prior to the closing date;"

"(c) will enter into no unusual transactions without obtaining the written consent of the Buyer, except that this limitation shall have no reference to normal commercial transactions entered into in connection with the general types of business heretofore conducted;"

"(d) promptly after the completion of the Consolidated Statement of Income and Expense of the Sellers for any fiscal year of the Sellers ending on a date prior to December 31, 1948, and the Consolidated Balance Sheet of the Sellers as at the end of any such fiscal year, will furnish to the Buyer copies of such  
75 Statement and Balance Sheet as certified by independent public accountants moreover, during the period beginning March 1, 1947, and ending on the day of closing, promptly after the issue by the chief financial officer of the Sellers of each monthly consolidated statement of income and expense and monthly balance sheet of the Sellers, in accordance with the established practice of the Sellers, will furnish a copy thereof to the Buyer;"

"(f) (1) will furnish to the Buyer promptly after the first day of January, April, July and October prior to the closing complete information as to each internal or external commitment for improvements or additions to plant or equipment in excess of \$25,000 and also with a statement of aggregate expenditures during each quarter calendar year for improvements or additions to plant or equipment which have been charged to capital account; (2) will not without the written consent of the Buyer acquire any additional fixed assets, except (i) fixed assets for the acquisition of which the Sellers' or one or more of them, are already committed, (ii) fixed assets which have already been approved by the Buyer, (iii) certain Government-owned facilities if it is decided by the Sellers to acquire the same, (iv) other facilities for the production of line pipe referred to in pipe line contracts, and (v) other fixed assets the acquisition and installation cost of which shall not exceed an aggregate amount computed at the rate of \$100,000 for each month, beginning March 1, 1947, and ending on the date of closing; (3) will not without the written consent of the Buyer acquire any fixed assets constituting an operating plant of the person or com-  
76 pany from whom the plant is acquired; and (4) will not without the written consent of the Buyer dispose of, abandon or dismantle fixed assets at any one location of a value in excess of \$50,000; and"

3. Notwithstanding The amendments of subdivision (b), (c), (d), and (f) of Paragraph 16 of said agreement made by this agreement, said subdivisions as they were contained in said agreement shall be restored to their original form and in such form shall again become effective sixty (60) days prior to any closing of the proposed transaction and shall then continue in effect until the closing.

4. All the terms and provisions of said agreement shall continue in full force and effect except as changed or modified by this agreement.

In witness whereof, the parties hereto have executed this agreement in six original counterparts the day and year first above written.

CONSOLIDATED STEEL CORPORATION,

By \_\_\_\_\_, *President.*  
\_\_\_\_\_, *Secretary.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

WESTERN PIPE & STEEL COMPANY OF CALIFORNIA

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

77

THE STEEL TANK AND PIPE COMPANY OF CALIFORNIA,

By \_\_\_\_\_, *Vice President.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

CONSOLIDATED SHIPYARDS, INC.,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

CONSOLIDATED STEEL CORPORATION OF TEXAS,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

COLUMBIA STEEL COMPANY,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

78

STATE OF CALIFORNIA,

County of Los Angeles, ss:

On this \_\_\_\_\_ day of March 1947, before me  
\_\_\_\_\_, a Notary Public in and for said

County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Steel Corporation, a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

79 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Western Pipe & Steel Company of California, a Corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

80 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the Vice President of The Steel Tank and Pipe Company of California, a corporation, and acknowledged that as such Vice President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant

to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

81 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Ship-yards, Inc., a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

82 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Steel Corporation of Texas, a corporation, and acknowledged that as such President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

83 STATE OF CALIFORNIA,  
City and County of San Francisco, ss:

On this \_\_\_\_\_ day of March 1947, before me  
\_\_\_\_\_, a Notary Public in and for said  
City and County and State, personally appeared \_\_\_\_\_  
\_\_\_\_\_, personally known to me to be the President of  
Columbia Steel Company, a corporation, and \_\_\_\_\_  
\_\_\_\_\_, personally known to me to be the Secretary of  
said corporation, and severally acknowledged that as such Presi-  
dent and Secretary, they signed and delivered the foregoing in-  
strument for and on behalf of said corporation for the purposes and  
consideration therein expressed, and caused the corporate seal of  
said corporation to be affixed thereto, pursuant to authority given  
by the Board of Directors of said corporation, as their free and  
voluntary act, and as the free and voluntary act and deed of said  
corporation.

In witness whereof, I have hereunto set my hand and official  
seal.

\_\_\_\_\_, Notary Public.

84 In the District Court of the United States

[Title omitted.]

*Answer of Columbia Steel Company, United States Steel Corpora-  
tion, and United States Steel Corporation, of Delaware*

85 The defendants, Columbia Steel Company, United States  
Steel Corporation, and United States Steel Corporation of  
Delaware, answering the complaint herein, say:

FIRST DEFENSE

The complaint fails to state a claim against these defendants  
upon which relief can be granted.

SECOND DEFENSE

1: These defendants admit the averments of paragraph 1 of  
the complaint but deny that they have violated either Section 1  
or Section 2 of the Sherman Antitrust Act.

2. These defendants admit the averments of paragraph 2 of  
the complaint.

86 3. Answering paragraph 3 of the complaint, these de-  
fendants admit that Columbia and U. S. Steel of Delaware  
are wholly-owned subsidiaries of U. S. Steel and aver that U. S.

Steel exercises only such control as is customarily exercised by a stockholder owning all of the stock of a corporation. Except as herein admitted or explained, these defendants deny the averments of paragraph 3 of the complaint.

4. Answering paragraph 4 of the complaint, these defendants aver that steel plates, sheets, shapes and bars are rolled steel products and are raw materials used by steel fabricators in the fabrication of steel ships, buildings, bridges, boilers, welded pipe for pipe lines, and other similar and dissimilar fabricated structural products and fabricated plate products, and parts thereof. Except as herein admitted or explained, these defendants deny the averments of paragraph 4 of the complaint.

5. Answering paragraph 5 of the complaint, these defendants aver that wholly owned subsidiaries of U. S. Steel produce and sell in the aggregate in the United States larger quantities of rolled steel products than any other steel producer; that such subsidiaries fabricate or sell approximately the same quantity of fabricated structural products as one other fabricator and more than any one of the remaining fabricators; that such subsidiaries are not engaged in the fabrication and sale of fabricated plate products; that such subsidiaries sell in interstate commerce varying quantities of rolled steel products to various steel fabricators in the states of Arizona, California, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington in competition with other producers of rolled steel products; that such subsidiaries sell rolled steel products to Consolidated and its subsidiaries in the states of Arizona, California, and Texas; that Columbia produces some rolled steel products in California and sells most of the rolled steel products sold by subsidiaries of U. S. Steel in the states of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; and that Columbia and other wholly owned subsidiaries of U. S. Steel sell a relatively small but not substantial part of the total fabricated steel products sold in the states referred to in the complaint as the "Consolidated market." Except as herein admitted or explained, these defendants deny the averments of said paragraph 5.

6. Answering paragraph 6 of the complaint, these defendants aver that U. S. Steel of Delaware renders technical assistance, as an independent contractor, to all of the subsidiaries of U. S. Steel engaged in rolling and fabricating steel products, coordinates and integrates their activities, and makes recommendations to them with respect to matters affecting their individual businesses. Except as herein admitted or explained, these defendants deny the averments of paragraph 6 of the complaint.

7. Answering paragraph 7 of the complaint, these defendants aver that Consolidated and its subsidiaries are engaged princi-

pally in the fabrication of structural products and plate products which it sells principally in California and to a lesser extent in the other states referred to in the complaint as the "Consolidated market"; admit that Consolidated and its subsidiaries operate plants in Los Angeles, Vernon, Fresno, Berkeley and Taft, California, Phoenix, Arizona, and Orange, Texas; aver, upon information and belief, that the "work performed on contracts" (referred to in the complaint as "ret sales") by Consolidated and its subsidiaries for the year ending August 31, 1946, was about seventy-seven million dollars for departments or agencies of the United States Government and about fourteen million dollars to all others, making a total of about ninety-one million dollars. Except as herein admitted or explained, these defendants deny the averments of paragraph 7 of the complaint.

8. Answering paragraph 8 of the complaint, these defendants aver that Columbia made an agreement dated as 88 of December 14, 1946, with Consolidated and all of Consolidated's wholly owned subsidiaries engaged in fabricating or selling steel products; that said agreement was approved by the Board of Directors of Columbia on December 13, 1946, and by the Board of Directors of Consolidated on December 16, 1946; that on January 18, 1947, the said agreement was amended in certain particulars; that Exhibit "A" is a correct copy of said agreement as amended on January 18, 1947; that said agreement was made with the approval and assistance of U. S. Steel and U. S. Steel of Delaware; that on March 31, 1947, the defendants agreed to amend further the agreement of December 14, 1946, in the manner and upon the terms and conditions set forth in Exhibit "B" attached hereto and made a part hereof and reference is made to said Exhibit "A" and to Exhibit "B" for a correct statement of the terms and conditions thereof. Defendants further aver that the closing of the transaction set forth in said agreement, as amended, will not take place prior to the entry of final judgment by the trial court in this action, or until this action shall have been dismissed, or until the entry of an order by this court relieving the defendants herein from any obligation to refrain from closing the said transaction. Except as herein averred or explained, these defendants deny the averments of paragraph 8 of the complaint.

9. Answering paragraph 9 of the complaint, these defendants aver that upon consummation of said agreement, the subsidiaries of U. S. Steel will supply, to the extent practicable and as such products are available, the entire demand of the acquired business for rolled steel products, except for such items as they do not produce; that one major purpose of said purchase is to supply an outlet for rolled steel products produced at the Geneva Steel

Plant at Geneva, Utah, which was acquired June 19, 1946, by Geneva Steel Company, a wholly owned subsidiary of U. S. Steel, from Reconstruction Finance Corporation, acting by and through War Assets Administration; deny that Consolidated is a substantial market for the rolled steel products of producers other than U. S. Steel subsidiaries; deny that the business now owned by Consolidated is competitive with subsidiaries of U. S. Steel except to a negligible extent, and aver that to the negligible extent fabricated steel products now produced and sold by Consolidated, are competitive with fabricated steel products produced and sold by U. S. Steel subsidiaries, such negligible competition will be eliminated, but deny that such competition is substantial or that the elimination thereof is unlawful. Except as heren admitted or explained, these defendants deny the averments of paragraph 9 of the complaint.

10. These defendants deny the averments of paragraph 10 of the complaint.

11. These defendants deny the averments of paragraph 11 of the complaint.

Wherefore, these defendants pray that the plaintiff be denied any of the relief prayed for by it in the complaint; that this action be dismissed, and that these defendants have and recover their taxable costs herein.

Dated April 9, 1947.

(S) E. D. STEEL, Jr.,

*Attorney for Columbia Steel Company, United States Steel Corporation and United States Steel Corporation of Delaware, Defendants Herein.*

90 [Duly sworn to by A. L. Mulling, jurat omitted in printing.]

91 Exhibit "B" to answer

The undersigned hereby agree to execute and deliver the attached extension agreement, to be dated and made effective as of March 31, 1947, within five days after the entry of an order to be made with reference to the Government's motion for a preliminary injunction in the action entitled "United States vs. Columbia Steel Company, et al." in the District Court of the United States for the District of Delaware, provided such execution and delivery are not prohibited by the Order.

Dated March 31, 1947.

CONSOLIDATED STEEL CORPORATION,

By (S) A. G. ROACH, President.

[SEAL]

(S) JOHN M. ROBINSON, Jr., Secretary.

Attest:

(S) O. I. ALBERA, *Assistant Secretary.*WESTERN PIPE & STEEL COMPANY  
OF CALIFORNIA,[SEAL] By (S) L. N. SLATER, *President.*

Attest:

(S) L. W. COUTURE, *Asst. Secretary.*92 THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,[SEAL] By (S) F. S. HOWARD, *Vice President.*

Attest:

(S) ALFRED WRIGHT, *Assistant Secretary.*

CONSOLIDATED SHIPYARDS, INC.,

[SEAL] By (S) A. G. ROACH, *President.*

Attest:

(S) E. H. LEBRETON, *Assistant Secretary.*CONSOLIDATED STEEL CORPORATION  
OF TEXAS,[SEAL] By (S) H. C. CRANFILL, *Vice President.*

Attest:

(S) O. I. ALBERA, *Assistant Secretary.*

COLUMBIA STEEL COMPANY,

[SEAL] By (S) W. A. ROSS, *President.*

Attest:

(S) THOMAS, ASHBY, *Secretary.*93 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Steel Corporation, a corporation, and O. I. Albera, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL] (S) EDNA R. WINTER, *Notary Public.*

My Commission Expires February 4th, 1950.

24

## UNITED STATES VS. COLUMBIA STEEL CO. ET AL.

94

## STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared L. N. Slater, personally known to me to be the President of Western Pipe & Steel Company of California, a corporation, and L. W. Couture, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER, *Notary Public.*

My Commission Expires February 4th, 1950.

95

## STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared F. S. Howard, personally known to me to be the Vice President of The Steel Tank and Pipe Company of California, a corporation, and Alfred Wright, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) EDNA R. WINTER, *Notary Public.*

My Commission Expires February 4th, 1950.

96

## STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Shipyards, Inc., a corporation, and E. H. LeBreton, personally known to me to be the Assistant Secretary of

said corporation, and severally acknowledged that as such President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL] (S) EDNA R. WINTER, *Notary Public*.

My Commission Expires February 4th, 1950.

97 STATE OF CALIFORNIA,  
*County of Los Angeles, ss:*

On this 31st day of March 1947, before me, Edna R. Winter, a Notary Public in and for said County and State, personally appeared H. C. Cranfill, personally known to me to be the Vice President of Consolidated Steel Corporation of Texas, a corporation, and O. I. Albera, personally known to me to be the Assistant Secretary of said corporation, and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL] (S) EDNA R. WINTER, *Notary Public*.

My Commission Expires February 4th, 1950.

98 STATE OF CALIFORNIA,  
*City and County of San Francisco, ss:*

On this 3rd day of April 1947, before me Hazel E. Thompson, a Notary Public in and for said City and County and State, personally appeared W. A. Ross, personally known to me to be the President of Columbia Steel Company, a corporation, and Thomas Ashby, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and volun-

tary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

(S) HAZEL E. THOMPSON, *Notary Public*.

My Commission Expires October 14, 1950.

99 This Agreement made and entered into as of the — day of March 1947, by and between (1) Consolidated Steel Corporation, a corporation organized and existing under the laws of the State of California, Western Pipe & Steel Company of California, a corporation organized and existing under the laws of the State of California, The Steel Tank and Pipe Company of California, a corporation organized and existing under the laws of the State of California, Consolidated Shipyards, Inc., a corporation organized and existing under the laws of the State of California, and Consolidated Steel Corporation of Texas, a corporation organized and existing under the laws of the State of Texas (which said five corporations are hereinafter sometimes collectively referred to as the "Sellers"), and (2) Columbia Steel Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Buyer"), witnesseth:

Whereas, the parties hereto entered into an agreement dated as of December 14, 1946, which was amended on January 18, 1947 (said agreement as so amended being hereinafter sometimes referred to as "said agreement"), whereby the Sellers agreed to sell, subject to the approval of their respective shareholders, and the Buyer agreed to purchase, certain of the business, property and assets of the Sellers, upon the terms and conditions therein set out; and

Whereas, the Department of Justice has filed an action to prevent the consummation of said sale and purchase; and

Whereas, counsel for the Sellers and counsel for the Buyer have advised their respective clients that, in their opinion, the transaction is entirely lawful and not within the condemnation of the Sherman Act; and

100 Whereas, the parties hereto have agreed that it is advisable to postpone the closing of the transaction and, accordingly, that it is desirable to amend certain of the provisions of and to supplement said agreement in the manner and to the extent herein provided:

Now, therefore, in consideration of the premises and of the mutual agreements of the parties hereto herein contained, it is hereby agreed as follows:

1. The closing of the transaction covered by said agreement will be governed by the following provisions (A), (B), (C), (D) and (E) of this Paragraph 1:

(A) If a judgment decree or order adjudicating that the transaction is not within the condemnation of the Sherman Act or that its consummation is not subject to being enjoined or restrained under said Act shall become final on or prior to December 31, 1948, or if any suit or other proceeding which may be brought under the Sherman Act to enjoin the consummation of the transaction, or to determine its lawfulness is dismissed or otherwise terminated prior to said date with prejudice to the party bringing the same, the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date on which such adjudication shall become final or after the date of such dismissal or termination, or at such other time as shall be mutually agreed upon.

(B) If prior to December 31, 1948, the parties hereto shall agree in writing that the question of the lawfulness of the transaction under the Sherman Act has been disposed of to their mutual satisfaction or that there is no deterrent to the closing of the transaction, then the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date  
101 of such agreement, or such other time as shall be provided therein or as shall be otherwise agreed upon between the parties hereto.

(C) If none of the events set forth in the foregoing subdivisions (A) and (B) upon which the transactions shall proceed to closing shall occur prior to December 31, 1948, then, either the Sellers or the Buyer shall have the right to terminate said agreement by giving to the other party or parties written notice of termination and upon the giving of such notice said agreement shall terminate and shall be deemed cancelled in its entirety effective as of December 31, 1948, with the same force and effect as if it had never been entered into, and none of the parties thereto shall have any obligation or liability thereunder or by reason thereof, or by reason of any action taken thereunder or in relation thereto against any of the other parties thereto.

(D) Irrespective of the provisions of the foregoing subdivisions (A), (B), and (C), if the parties hereto shall at any time prior to January 1, 1949, or thereafter, determine that changed circumstances or other considerations justify the extension of the date of December 31, 1948, referred to in said subdivisions (A), (B), and (C), or the taking of action with respect to the closing of the transaction or in relation to said agreement differing from the action provided for in said subdivisions (A), (B), and (C), and, in the light of such changed circumstances or other considerations,

shall mutually agree upon the terms and conditions of a further agreement to be entered into, such further agreement shall supersede the provisions of said subdivisions (A), (B), and (C) to the extent provided for in such further agreement.

(E) Notwithstanding the provisions of the foregoing subdivisions (A), (B), (C), and (D), the closing shall not take place prior to the entry of final judgment by the trial court in the action heretofore commenced by the Department of Justice, or until such action shall have been dismissed, or until the entry of an order by the court relieving the defendants in said action from any obligation to refrain from closing the transaction.

2. Said agreement is hereby amended as hereinafter in this Paragraph 2 provided:

(a) The last paragraph (page 6) of Paragraph 2 is amended to read as follows:

"If by agreement of the parties the day of the closing shall be accelerated or postponed, the respective times for the performance of the obligations of the parties hereto to be otherwise performed on or with relation to specific dates or during specific periods, or otherwise, shall be accelerated or postponed to the same extent that the closing date is accelerated or postponed, except as may be otherwise mutually agreed, and except that the requirements of Paragraph 21 of said agreement shall be deemed to have been complied with by the Sellers if they shall be complied with at any time prior to the closing of the transaction."

(b) Subdivision (1) of Paragraph 3 (pages 6-7) is amended to read as follows:

"(1) For fixed assets—\$8,293,319,

(a) increased by the full amount of any properly capitalizable expenditures made since August 31, 1946, and

(b) (i) as to items, other than land, which have been or may be acquired after August 31, 1946, and which have been or may

be disposed of, abandoned or dismantled on or before the closing day, decreased by one hundred percent of the depreciated book value thereof at the date of the disposition, abandonment or dismantlement stated on the books of the Sellers in accordance with their established methods of accounting.

(ii) as to items, other than land, which were acquired on or prior to August 31, 1946, and which have been or which may be disposed of, abandoned, or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the original cost of any fixed assets other than those acquired from Old Western Pipe, and, as to items acquired from Old Western Pipe which have been or which may be disposed of, abandoned or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the undepreciated

book value thereof as shown by the books of Old Western Pipe at December 15, 1945—less, in each case, agreed salvage value of assets abandoned or dismantled;

(iii) decreased for depreciation, since August 31, 1946, in the case of assets other than those acquired from Old Western Pipe, stated on the books of the Sellers in accordance with their established methods of accounting;

(iv) decreased in an amount equal to the amount of depreciation that would have been accrued on the books of Old Western Pipe from August 31, 1946, to and including the day of closing, on the assets acquired by Consolidated of California from Old Western Pipe if such assets had continued to be held by Old Western Pipe to and including the day of closing and Old Western Pipe's established rates and methods of depreciation on and prior to

December 15, 1945, had been continued to and including the day of closing, provided, however, that in the case of any such assets disposed of, abandoned or dismantled the amount of such decrease shall be limited to the depreciation that would have been taken thereon prior to the time of the disposition, abandonment or dismantlement thereof;

(v) as to all land reflected on Exhibit A or on the books of Old Western Pipe on December 15, 1945 (and not disposed of prior to August 31, 1946), not owned by the Sellers on the day of closing, decreased by one hundred per cent of the book value thereof as so reflected."

(c). The provision on page 9 relating to the time for payment for prepayments is amended to read as follows:

"For the assets referred to in subdivision (6) (a) within thirty days after the day of closing or within ten (10) days after the amounts of such prepayments are known, whichever is later;"

(d) The provision on page 10 relating to an advance of \$5,000,000 is amended to read as follows:

"If the Sellers shall so request, the Buyer will at the closing deliver to the Sellers the sum of \$5,000,000, or seventy-five per cent of the aggregate book values (as shown on the books of the Sellers as of the last day of the last month for which such figures are available) of the assets referred to in subdivisions (2) and (3)

(a) of the transfer assets, whichever is less, as an advance payment to be applied first to the purchase price of the assets referred to in subdivision (2), and any balance remaining shall be applied to the purchase price of the assets referred to in subdivision (3) (a)."

(e) The eighth line of the paragraph on page 10 having reference to the facilities installed at the Maywood plant of the Sellers to be used in the performance of pipe line contracts is amended to read as follows: "be paid for said facilities and such

other pipe line facilities as may be installed by the Sellers, or any of them, prior to the closing, fifty per cent of all expenditures with respect to all such facilities."

(f) Paragraph 4, page 11, is amended by adding at the end thereof the following: "and the Sellers shall reimburse the Buyer the cost of the performance by the Buyer of any of the obligations of the Sellers, or any of them, under each of such contracts for which reimbursement is not provided by such contract."

(g) Subdivisions (b), (c), (d), and (f) (pages 16 and 17) of Paragraph 16 are amended to read as follows:

"(b) will advise the Buyer of any development in the Sellers' business or affairs which is of a character which may seriously and adversely affect the transfer assets or their operation prior to the closing date;"

"(c) will enter into no unusual transactions without obtaining the written consent of the Buyer, except that this limitation shall have no reference to normal commercial transactions entered into in connection with the general types of business heretofore conducted;"

"(d) promptly after the completion of the Consolidated Statement of Income and Expense of the Sellers for any fiscal year of the Sellers ending on a date prior to December 31, 1948, and the Consolidated Balance Sheet of the Sellers as at the end of any such fiscal year, will furnish to the Buyer copies of 106 such Statement and Balance Sheet as certified by independent public accountants moreover, during the period beginning March 15, 1947, and ending on the day of closing, promptly after the issue by the chief financial officer of the Sellers of each monthly consolidated statement of income and expense and monthly balance sheet of the Sellers, in accordance with the established practice of the Sellers, will furnish a copy thereof to the Buyer;"

"(f) (1) will furnish to the Buyer promptly after the first day of January, April, July and October prior to the closing complete information as to each internal or external commitment for improvements or additions to plant or equipment in excess of \$25,000 and also with a statement of aggregate expenditures during each quarter calendar year for improvements or additions to plant or equipment which have been charged to capital account; (2) will not without the written consent of the Buyer acquire any additional fixed assets, except (i) fixed assets for the acquisition of which the Sellers, or one or more of them, are already committed, (ii) fixed assets which have already been approved by the Buyer, (iii) certain Government-owned facilities if it is decided by the Sellers to acquire the same, (iv) other facilities for the production

of line pipe referred to in pipe-line contracts, and (v) other fixed assets the acquisition and installation cost of which shall not exceed an aggregate amount computed at the rate of \$100,000 for each month, beginning March 1, 1947, and ending on the date of closing; (3) will not without the written consent of the Buyer acquire any fixed assets constituting an operating plant of the person or company from whom the plant is acquired; and 107 (4) will not without the written consent of the Buyer dispose of, abandon or dismantle fixed assets at any one location of a value in excess of \$50,000; and

3. Notwithstanding the amendments of subdivision (b), (c), (d), and (f) of Paragraph 18 of said agreement made by this agreement, said subdivisions as they were contained in said agreement shall be restored to their original form and in such form shall again become effective sixty (60) days prior to any closing of the proposed transaction and shall then continue in effect until the closing.

4. All the terms and provisions of said agreement shall continue in full force and effect except as changed or modified by this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in six original counterparts the day and year first above written.

CONSOLIDATED STEEL CORPORATION,

By \_\_\_\_\_, *President.*  
\_\_\_\_\_, *Secretary.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

WESTERN PIPE & STEEL COMPANY OF  
CALIFORNIA,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

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THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,

By \_\_\_\_\_, *Vice President.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

CONSOLIDATED SHIPYARDS, INC.,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

CONSOLIDATED STEEL CORPORATION OF  
TEXAS,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, Secretary.

COLUMBIA STEEL COMPANY,

By \_\_\_\_\_, President.

Attest:

\_\_\_\_\_, Secretary.

109 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me to be the President of Consolidated Steel Corporation, a corporation, and \_\_\_\_\_ personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

110 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this \_\_\_\_\_ day of March, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me to be the President of Western Pipe & Steel Company of California, a Corporation and \_\_\_\_\_ personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

## 111 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the Vice President of The Steel Tank and Pipe Company of California, a corporation, and acknowledged that as such Vice President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

## 112 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Shipyards, Inc., a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

## 113 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Steel Corporation of Texas, a corporation, and acknowledged that as such President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the

34. UNITED STATES VS. COLUMBIA STEEL CO. ET AL.

purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act; and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, *Notary Public.*

114 STATE OF CALIFORNIA,  
*City and County of San Francisco, ss:*

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Columbia Steel Company, a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, *Notary Public.*

116 In the District Court of the United States

[Title omitted.]

*Preliminary injunction.*

On this 3rd day of June A. D. 1947, the above-entitled cause having come on to be heard upon the motion of the plaintiff for a preliminary injunction, and upon the verified complaint, the verified answers of the respective defendants, and the reply affidavit filed on behalf of the plaintiff, and the court having heard the arguments of counsel for the parties respectively, and the matter having been maturely considered by the court, and it appearing:

FINDINGS OF FACT

A. That the parties are in sharp conflict as to whether the transaction described in the complaint is in violation of Sections 1 and

2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", but that the defendants nevertheless have consented to the entry of a preliminary injunction that will enjoin the transfer of any assets or the  
117 payment of any portion of the purchase price as contemplated by said transaction during the pendency of this action, or until further order of the court;

B. That the only action under or pursuant to the said transaction that might result in irreparable injury during the pendency of this action would be a transfer of any portion of assets or payment of any part of the purchase price in or toward consummation of said transaction;

And it further appearing to the Court:

#### CONCLUSION OF LAW

That a preliminary injunction, limited as hereinabove recited and as hereinafter set forth, would be just in the premises.

It is therefore ordered by the Court as follows:

(1) During the pendency of this cause, or until further order of the court, Consolidated Steel Corporation is hereby enjoined and restrained from making any transfer of assets or receiving any portion of the purchase price agreed to be paid therefor under or pursuant to the contract dated December 14, 1946, constituting Exhibit A to the complaint herein, or under or pursuant to any modification or amendment thereof;

(2) During the pendency of this cause, or until further order of the court, Columbia Steel Company is hereby enjoined and restrained from receiving any transfer of assets from or making any payment therefor to Consolidated Steel Corporation under or pursuant to the said contract of December 14, 1946, or any modification or amendment thereof;

(3) During the pendency of this cause, or until further order of the court, United States Steel Corporation and United States Steel Corporation of Delaware are hereby enjoined and restrained from doing any act or thing inconsistent with Paragraphs (1) or (2) hereof.

(S) RICHARD S. RODNEY, J.

118 In the District Court of the United States

[Title omitted.]

#### *Findings of fact and conclusions*

A review of the record clearly shows that the following Findings of Fact are supported by evidence.

1. The defendant Consolidated Steel Corporation, a California corporation, and its subsidiaries, Western Pipe & Steel Company of California, The Steel Tank and Pipe Company of California and Consolidated Steel Corporation of Texas, are engaged in the business of making and selling in interstate commerce fabricated structural steel products and fabricated plate products.

2. The defendant United States Steel Corporation is organized under the laws of the State of New Jersey and it owns all of the outstanding capital stock of the defendants Columbia Steel Company and United States Steel Corporation of Delaware.

119 3. The defendant Columbia Steel Company, a corporation organized under the laws of the State of Delaware, is engaged in the business on the West Coast of making and selling in interstate commerce rolled steel products and in selling in interstate commerce fabricated structural steel products made by American Bridge Company and Virginia Bridge Company, both subsidiaries of U. S. Steel.

4. The defendant United States Steel Corporation of Delaware is organized under the laws of the State of Delaware and renders technical assistance to all of the subsidiaries of U. S. Steel engaged in rolling and fabricating steel products.

5. Steel plates, sheets, shapes, and bars are rolled steel products and are raw materials used by steel fabricators in the fabrication of steel ships, buildings, bridges, boilers, welded pipe for pipe lines, and other fabricated structural products and fabricated plate products, and parts thereof. The fabricator shears, trims, drills, punches, bends and forms the steel plates, sheets, shapes, and bars, and then assembles them by riveting or welding into the completed unit or product.

6. Fabricated structural steel products consist of buildings, bridges, and other products made principally of steel shapes. Fabricated plate products consist of pressure vessels, tanks, welded pipe for pipe lines, and other products made principally of steel plates. The term "fabricated steel products," as used in the complaint, describes both fabricated structural steel products and fabricated plate products. The business of fabricating plate products and the business of fabricating structural steel products are distinct and different businesses, requiring different facilities and producing different products.

120 7. U. S. Steel has two subsidiaries, American Bridge Company of Pittsburgh, Pennsylvania, and Virginia Bridge Company of Roanoke, Virginia, that are engaged in the making and selling in interstate commerce of fabricated structural steel products. These U. S. Steel subsidiaries are not engaged in the business of making or selling fabricated plate products. The U. S. Steel subsidiaries have no fabricating plants located west of

the Mississippi River. Columbia Steel Company sells fabricated products of American Bridge Company and Virginia Bridge Company on the West Coast.

8. Consolidated has structural fabricating plants at Maywood near Los Angeles, California, and at Orange, Texas. It has also plate fabricating facilities at its various plants in California and Arizona.

9. U. S. Steel subsidiaries are engaged in the sale in interstate commerce of varying quantities of rolled steel products to various steel fabricators in the 11 states of Arizona, California, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington in competition with other producers of rolled steel products; such subsidiaries sell rolled steel products to Consolidated in the states of Arizona, California, and Texas. Consolidated is not engaged in the business of making and selling rolled steel products. Its requirements of rolled steel products were supplied by U. S. Steel subsidiaries and other producers and suppliers and its purchases for the five prewar years ending 1941 averaged less than 100,000 tons per year.

10. The following table shows total production by the steel industry of all rolled steel products; total production by U. S. Steel subsidiaries of such products; estimated consumption in the 11 states of such products; and Consolidated's total purchases of such products during the ten-year period from 1937 to 1946, all in net tons:

121 Year	Industry production all rolled steel prod- ucts	U. S. steel subsidiaries production all rolled steel prod- ucts	Estimated consumption all rolled steel prod- ucts 11 States	U. S. steel subsidiaries shipment of all rolled- steel prod- uction into the 11 States	Consoli- dated's pur- chases all rolled steel products
1937	38,345,158	14,097,006	4,362,900	1,556,085	103,286
1938	21,356,398	7,315,506	2,670,000	1,046,287	44,050
1939	34,955,175	11,707,251	3,030,000	1,434,385	69,862
1940	41,965,973	15,013,749	4,337,990	1,696,129	117,644
1941	60,942,979	20,416,604	6,066,757	2,441,840	163,428
1942	60,591,053	20,615,157	8,486,204	3,181,358	339,711
1943	62,210,261	20,147,616	10,124,831	3,706,886	404,180
1944	63,250,519	21,052,179	9,567,563	3,495,231	300,532
1945	56,602,322	18,410,264	7,232,590	2,378,112	225,273
1946	48,963,777	15,181,719	6,000,000	1,810,982	178,669
Total	498,213,612	163,967,691	62,443,775	22,737,293	2,036,635

11. During the five-year period prior to the war, from 1937 to 1941, the steel industry produced 201,565,681 tons of rolled steel products and U. S. Steel subsidiaries produced 68,530,776 tons of such products. Consolidated's purchases of all rolled steel products for that period amounted to 498,270 tons. Thus, Consolidated's purchases constituted less than  $\frac{1}{4}$  of 1% of total in-

dustry production and less than  $\frac{3}{4}$  of 1% of U. S. Steel subsidiaries' production.

12. During the year 1946, Consolidated purchased from U. S. Steel subsidiaries 83,846 tons of all rolled steel products and purchased from other producers and suppliers 94,823 tons of such products. Consolidated's purchases from U. S. Steel subsidiaries constituted less than  $\frac{3}{10}$  of 1% of their total production. Consolidated's purchases from other than U. S. Steel subsidiaries were less than  $\frac{3}{10}$  of 1% of total industry production, exclusive of the production of U. S. Steel subsidiaries. Consolidated's total purchases of 178,669 tons of rolled steel products constituted less than  $\frac{3}{10}$  of 1% of total industry production.

122 13. During the five-year period ending 1941, estimated consumption of rolled steel products in the 11 states was 21,009,647 tons. Consolidated's purchases during that period totaled 498,270 tons, or less than 2.4% of the total consumption in the 11 states. In 1946, estimated consumption in the 11 states of rolled steel products was 6,000,000 tons and Consolidated's purchases aggregated 178,669 tons, or less than 3% of the total consumption in the 11 states.

14. Upon consumption of the purchase agreement which is attached to the complaint herein and marked "Exhibit A," U. S. Steel subsidiaries will presumably supply, to the extent practicable and as such products are available, their own needs in the acquired plants for rolled steel products, except for such items as they do not produce.

15. In 1940 there were, excluding U. S. Steel subsidiaries, nine major suppliers of rolled steel products to Consolidated for whom total sales figures are available. The total sales of these suppliers amounted to \$1,350,155,711, and the sales made by these suppliers to Consolidated amounted to \$3,940,238, or  $\frac{3}{10}$  of 1% of their total sales. In 1940 Consolidated's purchases in no instance represented more than 1.15% of the sales of any of these major suppliers. In 1946 there were, excluding U. S. Steel subsidiaries, eleven major suppliers of rolled steel products to Consolidated for whom total sales figures are available. The total sales of all of these suppliers amounted to \$2,291,350,000, and the sales made by these suppliers to Consolidated amounted to \$3,572,572, or  $\frac{1}{100}$  of 1% of their total sales. In 1946 Consolidated's purchases in no instance represented more than 1.88% of the sales of any of the eleven major suppliers for whom sales figures were available. The sales to Consolidated of one major supplier, whose total sales figures are not available, represented approximately 3.7% of such supplier's estimated total production in 1946.

16. The rolled steel requirements of Consolidated represent a small part of the consumption of rolled steel products in the 11 states constituting the Consolidated market. The evidence fails to show that the acquisition of the business and assets of Consolidated by Columbia will injure any competitor of U. S. Steel subsidiaries which produces and sells rolled steel products or impair the ability of such competitor to compete with U. S. Steel subsidiaries in the production and sale of rolled steel products in the Consolidated market or elsewhere or otherwise restrict or suppress in any way competition in the production or sale of rolled steel products in the 11 states of the Consolidated market or will, in any way, be detrimental to the public interest. The business now owned by Consolidated is not a substantial market for the rolled steel products of producers which are selling such rolled steel products in competition with Columbia Steel Company and other wholly owned subsidiaries of U. S. Steel.

17. Purchasers of fabricated structural steel products usually solicit and accept bids from fabricators and award the work of fabricating and, if required, erecting the fabricated structural steel to the lowest qualified bidder. Such products are usually sold under individual contract to railroads, agencies of the Federal Government, contractors, owners, and others and are fabricated to the specific design and requirements of the purchaser, as distinguished from products manufactured by repetitive processes for the general channels of trade and commerce. Light-weight, simple types of fabricated steel products can be fabricated economically by small fabricating plants and are sold at  
 124 relatively low prices. Such products are for the most part sold locally because transportation costs involved in making delivery create competitive disadvantages which the more distant fabricators are unable to overcome. On the other hand, the large fabricating shops are equipped to fabricate economically specialized, complicated types of fabricated steel products that the small plants are, for the most part, unable to handle and that sell for relatively high prices, and transportation cost disadvantages are reduced on such products to an extent that the fabricators operating the large plants are able to expand their markets in varying degrees which, in the case of certain products, extend to all sections of the country.

18. Many different and variable factors determine the competition for each type of fabricated structural steel product, such as transportation costs, the design, weight, and size of fabricated materials and sections; availability of plant and equipment of the type and size required for the fabrication of the particular materials and section; availability of raw materials of the types and sizes required for the fabricated materials and sections; and

the ability of the fabricator to perform the work and deliver the fabricated materials to meet the erection or assembly schedule of the purchaser.

19. Consolidated sells its fabricated steel products principally in the state of California and to a lesser extent in the states of Arizona, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington in competition with other fabricators of fabricated steel products. During the ten-year period ending 1946, Consolidated's sales of fabricated structural steel products amounted to approximately \$22,920,859, and its sales of fabricated plate products and miscellaneous items  
125 amounted to approximately \$125,783,993. All other sales of Consolidated represent shipbuilding and other war work done for the government. Consolidated was engaged in the shipbuilding business during the war from 1940 to 1945. It was not engaged in the business of building ships prior to the war and has not engaged in it since.

20. U. S. Steel subsidiaries do not make or sell any of the products which are made or sold by Consolidated with the exception of certain fabricated structural steel products. Such fabricated structural steel products are specially made to meet the requirements of the individual purchasers. Consolidated fabricates welded pipe from steel plates, and National Tube Company, a subsidiary of U. S. Steel, manufactures butt-weld and seamless pipe. The two companies do not compete in the sale of their pipe products. Oil Well Supply Company, a U. S. Steel subsidiary, does not make or sell products which compete with products fabricated or sold by Consolidated. Consolidated does not produce any of the steel drums or other products that are manufactured by United States Steel Products Company, a U. S. Steel subsidiary. Such competition as has existed between Consolidated and U. S. Steel subsidiaries has been limited to occasional sales of such fabricated structural steel products.

21. The American Institute of Steel Construction compiles reports of bookings and shipments by fabricators of structural steel products of fabricated structural steel for bridges, buildings, and other permanent structures. During the six-year period from 1937 to 1942, the American Institute of Steel Construction reported total bookings by the structural fabricating industry of 9,997,880 tons of the types of products which it covers.  
126 During that same period, U. S. Steel subsidiaries booked for delivery in the 11 states 283,825 tons of the types of fabricated structural steel products reported by the Institute, and Consolidated booked 84,533 tons of such products. The bookings of the U. S. Steel subsidiaries for delivery in the 11 states were 2.84% of the national business, and Consolidated's bookings were

85/100 of 1% of the national business. The combined bookings of U. S. Steel subsidiaries and Consolidated in the 11 states during the six-year period were equivalent to 3.69% of the national bookings of the industry.

22. During the six-year period from 1937 to 1942, the American Institute of Steel Construction reported industry bookings in the 11 states totaling 1,665,698 tons of fabricated structural steel for buildings, bridges, and other permanent structures. Reports of industry bookings in the 11 states for 1943 to 1946 were not available. The bookings of U. S. Steel subsidiaries in the 11 states of the same types of products for the same period constituted 17% of the total of the industry, and the bookings of Consolidated constituted 5.1% of the total bookings of the industry. The combined bookings of the U. S. Steel subsidiaries and Consolidated of the types of products reported by the American Institute of Steel Construction constituted 22.1% of the total for the industry in the 11 states during the period from 1937 to 1942.

23. During the ten-year period ending 1946, U. S. Steel subsidiaries competed for 2,409 jobs in the 11 states involving 1,273,152 tons of fabricated structural steel products. Of this total tonnage, U. S. Steel subsidiaries were awarded 839 jobs for 499,605 tons or 39.2% of the tonnage on which they bid. Of the total tonnage upon which U. S. Steel subsidiaries bid, Consolidated bid on 166 jobs for 122,353 tons and was awarded

24,162 tons or 1.9% of the total tonnage on which U. S. Steel subsidiaries bid. The balance of the jobs upon which U. S. Steel bid was awarded to competitors and represented 749,385 tons or 58.9% of the total upon which U. S. Steel bid. Consolidated bid on 6.9% of the total jobs on which U. S. Steel subsidiaries bid and 9.6% of the total tonnage on which they bid. Consolidated competed for 6,377 jobs involving 578,847 tons and was awarded 2,390 jobs for a total of 159,997 tons of fabricated structural steel business in the 11 states during the ten-year period. This total includes the 24,162 tons upon which U. S. Steel subsidiaries also bid. The balance of 135,735 tons, upon which no bids were made by U. S. Steel subsidiaries, constituted 84.8% of Consolidated's total fabricated structural steel business; only 15.2% of its fabricated structural steel business (which was only 16% of its total business) was bid upon by both Consolidated and U. S. Steel subsidiaries.

24. Out of the total business in the 11 states during the ten-year period ending 1946, upon which U. S. Steel subsidiaries bid, consisting of 2,409 jobs representing 1,273,152 tons, Consolidated bid on 166 jobs representing 122,353 tons. Forty of these 166 jobs representing 38,920 tons were awarded to U. S. Steel; 35 jobs representing 24,162 tons were awarded to Consolidated; and 91

jobs representing 59,271 tons were awarded to competitors. The following table shows by types of products, first, the total jobs and tonnages bid by U. S. Steel subsidiaries in the 11 states during the ten-year period and the awards made of such jobs to U. S. Steel subsidiaries and others, including Consolidated, and, second, the number of jobs and tonnages bid by both U. S. Steel subsidiaries and Consolidated and the awards made to each of them and to others.

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125	Classification	U. S. Steel bids awarded to—				Jobs bid by both U. S. Steel Corporation and Consolidated Steel Corporation awarded to—									
		Total bids		U. S. S.		Others (including Consolidated)		Total bids		U. S. S.		Consolidated		Others	
		No. of jobs	Tons	No. of jobs	Tons	No. of jobs	Tons	No. of jobs	Tons	No. of jobs	Tons	No. of jobs	Tons	No. of jobs	Tons
	R. R. bridges and heavy duty trestles	178	98,931	108	72,653	70	26,298	14	13,521	10	5,166	2	4,500	2	3,855
	Light-weight highway bridges	321	23,904	91	6,794	230	17,110	9	591	4	192	2	221	3	178
	Heavy highway bridges	282	206,144	63	45,562	219	160,582	19	21,817	3	11,170	5	5,484	11	5,163
	Buildings, except classes 5 and 6	593	469,196	169	173,873	424	295,323	50	48,567	7	16,863	11	5,633	32	26,041
	Tier buildings	32	47,689	6	5,475	26	39,214	5	960	2	750			3	210
	Buildings for powerhouses	58	17,297	14	5,381	44	11,916	33	19,730	9	2,779	7	4,058	17	12,592
	Gates, etc., for irrigation projects	177	65,263	51	23,128	126	42,135	4	1,841			2	1,656	2	485
	Specialties	121	56,076	68	23,966	63	32,090	6	7,541					6	7,541
	Towers and electric substations	135	114,695	49	57,037	86	57,658	13	4,469			4	1,851	11	2,618
	Miscellaneous steel work	300	188,702	119	67,222	181	71,480								
	Fabricated products of Consolidated.														
	Miscellaneous materials	212	35,265	111	15,494	101	19,771	11	3,326	5	1,979	2	759	4	588
	Total	2,479	1,273,152	839	499,605	1,570	773,547	106	122,353	40	28,920	35	24,162	91	59,271

129 25. During the ten-year period ending 1946, Consolidated bid on a total of 578,847 tons of structural steel business in the 11 states and secured awards of 159,997 tons, including 24,162 tons obtained in competition with U. S. Steel subsidiaries. Consolidated's total business in structural and plate products amounted to 1,002,363 tons. Thus, its structural business was 16% of its total business and business obtained in competition with U. S. Steel subsidiaries was 2.4% of its total business.

26. During the ten-year period ending 1946, in the 11 states, Consolidated bid on 6,377 jobs which averaged 90 tons per job and U. S. Steel subsidiaries bid on 2,409 jobs which averaged 528 tons per job. Consolidated was awarded 2,390 jobs which averaged 67 tons as compared with 839 jobs awarded to U. S. Steel subsidiaries which averaged 596 tons. The 166 jobs on which both U. S. Steel subsidiaries and Consolidated bid averaged 737 tons. The 40 jobs awarded to U. S. Steel subsidiaries averaged 973 tons. The 35 jobs awarded to Consolidated averaged 690 tons.

27. The competition that existed during the ten-year period from 1937 to 1946 between Consolidated and the U. S. Steel subsidiaries in the manufacture and sale of fabricated steel products was not substantial.

28. During the ten-year period ending 1946, 306,448 tons or 62.5% of the 490,385 tons of fabricated structural steel shipped by U. S. Steel subsidiaries into the 11 western states were sold to agencies of the federal government. Prior to the war years, shipments to agencies of the federal government were made on land grant freight rates, which have since been abolished, and which were from \$8.10 to \$13.40 under the commercial freight rates then in effect. The application of the land grant freight rates to shipments of fabricated structural steel reduced considerably the disadvantage in transportation costs which the  
130 U. S. Steel subsidiaries experienced in the sale of fabricated structural steel to agencies of the federal government for delivery to West Coast destinations in competition with West Coast fabricators.

29. During the war years from 1941 to and including 1945, approximately 72% of the total fabricated structural steel tonnage shipped by U. S. Steel subsidiaries into the 11 states was sold to government agencies and 65.3% went into war and defense projects. For the ten-year period ending 1946, the tonnage shipped for war and defense projects constituted 36.5% of the total tonnage of fabricated structural steel shipped by the U. S. Steel subsidiaries into the 11 states. Sales of fabricated structural steel made during war time and for war jobs cannot be considered representative of normal competitive conditions and afford no

sound basis for determining the extent of competition between U. S. Steel subsidiaries and Consolidated.

30. Since January 1, 1937, commercial freight rates on fabricated structural steel shipped from Gary, Indiana, to Los Angeles, San Francisco and other Pacific Coast Ports have increased from \$20.10 to \$25.54 per ton. Commercial freight rates between other points have increased proportionately. These increases in freight rates have further increased the competitive disadvantages of the U. S. Steel subsidiaries in the sale of fabricated structural steel on the West Coast in competition with western fabricators.

31. The sale of steel plates and shapes produced at Geneva steel plant at prices computed on the Geneva price base has resulted in a reduction of approximately \$3.00 per ton in the cost of such products to West Coast fabricators. Such fabricators are now able to purchase Geneva's plates and shapes delivered at their plants on the West Coast at prices which are \$12.65 less than the prices paid by fabricators for plates and shapes at eastern and midwestern mills, plus transportation costs on the fabricated steel from fabricating plants in the Chicago area to West Coast destinations.

32. The difference in cost of \$12.65 per ton of fabricated structural steel delivered at West Coast destinations is larger than the profit which U. S. Steel subsidiaries are able to earn per ton of fabricated structural steel and such a disadvantage in cost eliminates them from the West Coast market except for specialized products which they are equipped to fabricate economically and which sell at higher prices per ton of product, thereby reducing the transportation charges in relation to total costs.

33. Prior to the acquisition of the Geneva steel plant by a U. S. Steel subsidiary, American Bridge Company had recommended that U. S. Steel construct two structural fabricating plants, one in the San Francisco area and the other in the Los Angeles area, and had prepared plans and selected locations. The war intervened and made it necessary for U. S. Steel to defer further consideration of the proposal.

34. The abolishment of land grant rates, the increase in commercial freight rates and the operation of the Geneva steel plant to make available to West Coast fabricators supplies of steel plates and shapes at reduced prices have combined to increase the disadvantages of U. S. Steel subsidiaries, operating from eastern plants, in competition with western fabricators except in special circumstances or in the sale of specialized products.

35. Bethlehem Steel Company and its subsidiaries are integrated producers of rolled steel products and fabricated structural

132 steel products, are the principal competitors of U. S. Steel subsidiaries and secure about the same percentage of the fabricated structural steel business as the U. S. Steel subsidiaries are able to secure. Bethlehem also makes and sells fabricated plate products. In addition to its large eastern fabricating plants, Bethlehem has fabricating plants located at Los Angeles, South San Francisco, and Alameda, California. It is the most important structural steel competitor of Consolidated in the western states and is able to supplement the work of its medium-sized West Coast fabricating plants by fabricating the more difficult and complicated parts in its large eastern plants and thus compete in the sale of all types of products. The acquisition of the fabricating facilities of Consolidated by U. S. Steel will reduce the existing competitive disadvantages which the U. S. Steel subsidiaries face in competition with Bethlehem and its West Coast subsidiary, Bethlehem Pacific Coast Steel Corporation, in the sale of fabricated structural steel products in the western states and will enable the U. S. Steel subsidiaries to compete on more even terms with Bethlehem and its subsidiary in that market.

36. During the ten-year period ending 1946, 100 different concerns, including Consolidated, bid successfully against U. S. Steel subsidiaries in the sale of fabricated structural steel products in the 11 states. Fifty of these concerns are located outside the 11-state area. Ninety different concerns are known to have sold fabricated structural steel products in the 11 states during 1946. There are 62 structural steel fabricators known to have fabricating plants located in the 11 states. Competition in the sale of the fabricated steel products in the 11 states is highly competitive and very extensive. There are many small fabricators throughout

133 products and doing principally a local business. There are additionally many of these small fabricating shops in the Southern California area alone and the small California fabricators compete with Consolidated in the sale of the smaller fabricated products. Fabricators located outside the 11 states competed with U. S. Steel subsidiaries in the sale of all of the different types of structural steel products which were sold by them in the 11 states during the 10-year period.

37. The acquisition of the assets and business of Consolidated by Columbia will enable U. S. Steel subsidiaries to produce fabricated steel products at a saving of transportation costs from eastern plants, and thereby enable such subsidiaries to compete on more even terms with West Coast fabricators, including Bethlehem, in the sale of such fabricated steel products.

38. Competition between Consolidated and the U. S. Steel subsidiaries is not substantial and its elimination will have no appreci-

able effect on the competition in the sale of fabricated structural steel products in the II states, which competition is active and vigorous and may be expected to continue to be active and vigorous upon acquisition of the business and assets of Consolidated by Columbia.

39. U. S. Steel designed, constructed and operated, without fee or charge, for the United States Government the Geneva steel plant, a war project at Geneva, Utah, for the production of ship plates and ship structurals. In the early part of 1945, U. S. Steel considered the acquisition of the plant but because of the speculative nature of the venture and because of public attacks by various people, within and without the government, upon U. S. Steel and the eastern steel industry, it was decided that the proper authorities should be notified that U. S. Steel was not interested in the purchase or lease of the property. Accordingly, on August 8, 1945, Benjamin F. Fairless, President of U. S. Steel, notified the President of Defense Plant Corporation that U. S. Steel was not interested in the purchase or lease of the property.

40. On September 4, 1945, the Surplus Property Administrator wrote to Mr. Fairless advising him that Reconstruction Finance Corporation and Surplus Property Administration would be happy to consider any offer by U. S. Steel to lease or purchase the Geneva plant.

41. On October 9, 1945, the Surplus Property Administrator submitted to Congress his report on the disposition of Government-owned iron and steel plants and facilities. He stated that particular interest had been focused on the disposal of the Geneva steel plant because it provides a local source of a basic commodity essential to the industrial growth of a relatively undeveloped area; that 27 of the country's 30 integrated steel companies capable of producing at least 300,000 net ingot tons per annum had been approached by Reconstruction Finance Corporation to determine whether they were interested in the lease or sale of the plant; that replies were received from all but two of the 27 companies and all of the replies were in the negative; that the remaining three integrated companies had previously shown an interest in the plant, two of them to lease the property with necessary additions to be paid for by the Government and the third, U. S. Steel, to lease or buy the property; thereafter, U. S. Steel had notified Defense Plant Corporation that it had decided to take no further action toward the acquisition of the plant because of problems involved in establishing the plant after the war as a sound and successful commercial enterprise and because of statements by Government officials which in practical effect appeared to U. S. Steel to rule it out as a prospective lessee or purchaser of the plant; that the

135 Administrator's position relative to U. S. Steel was indicated in his letter of September 4, 1945 to Mr. Fairless.

42. The Administrator testified before a Joint Committee of the two Houses of Congress that "The Surplus Property Administration feels that the best company to have purchase this plant would be the United States Steel Corp. . . . I only mention that because there at one time seemed to be a feeling that we were opposed to the United States Steel Corp. We are not opposed to them . . . we believe that they may be the only company in the steel industry that can carry on this operation unless the government subsidizes."

43. Following U. S. Steel's announcement on August 8, 1945, that it was not interested in the property, a great amount of pressure was exerted upon Mr. Fairless and other officials of the U. S. Steel, including members of the Board of Directors, to bid on the Geneva steel plant, by various people, including people in the government and the senators from Utah. A new study of the matter was then made by a committee appointed by Mr. Fairless and, as a result of this subsequent reexamination, Mr. Fairless recommended to the Board of Directors of U. S. Steel that a bid be submitted for the purchase of the property. The Board authorized such a bid.

44. On May 1, 1946, Mr. Fairless wrote to Lt. Gen. E. B. Gregory, Administrator, War Assets Administration, stating that "In response to several specific requests made to us from time to time by representatives of the government to bid for the Geneva steel plant, we enclose the bid of United States Steel Corporation for that plant."

136 45. All bids for the Geneva steel plant were fully reported to the Congress on May 10, 1946.

46. The bid submitted by U. S. Steel for the Geneva steel plant offered \$47,500,000 for the property and the inventories and obligated U. S. Steel, if the bid were accepted, to spend out of its own funds not less than \$18,600,000 for additional facilities necessary for the peacetime operation of the plant, including facilities for the annual production of 386,000 tons of hot rolled coils. In addition, U. S. Steel proposed to construct at Pittsburg, California, a cold reduction mill having an annual production of 325,000 tons of cold reduced sheets and tin plate which, if its bid were accepted, would utilize the 386,000 tons of hot-rolled coils. Such mill was estimated to cost \$25,000,000.

47. On May 24, 1946, the Surplus Property Subcommittee of the Committee on Military Affairs of the Senate published a letter dated May 23, 1946 from the Director, Office of Real Property Disposal, of War Assets Administration, advising that the Price Review Board had acted favorably on the recommendation, which

was included in the memorandum attached to the letter, to accept the bid of United States Steel Corp. and that award of the Geneva steel plant was accordingly being made to United States Steel Corp. The memorandum to the Price Review Board which was attached to the Director's letter of May 23, 1946, contained the following comments:

"The Geneva steel plant in Utah is the largest steel plant constructed by the government to help meet war requirements for steel. It cost approximately \$191,000,000, including facilities at the iron mines and quarries, coal mines, and other auxiliary and service facilities.

137 "From the time of its inception in 1941 and during its construction and subsequent operation, this plant has been of national interest particularly to the West and the west coast. Its prospective disposal by government to private industry is likewise of outstanding national interest.

"Considerable time was expended and every effort made to secure the best possible bid for the Geneva steel plant. Whether the bids received are adequate or not, it appears certain that nothing further can be gained through a second call for bids. In fact, such call might be detrimental. It is believed that the interest of the government and the national economy can best be served by promptly making an award from the bids already received, and this memorandum to the Price Review Board is submitted on that basis.

"The bid of U. S. Steel meets the following applicable objectives of the Surplus Property Act:

"(a) It will assure the most effective use of the Geneva steel plant for war purposes and common defense. The bid of U. S. Steel proposes to preserve for future emergencies, the original facilities of the Geneva Steel plant in good state of repair for a period of not less than 5 years.

"(b) It will stimulate full employment including employment of war veterans. Employment will be provided at the Geneva steel plant proper, the Geneva coal mine, the quarry, and at the proposed new cold reduction facilities at Pittsburg, Calif., for approximately 5,000 persons when the Geneva steel plant rate of production is 600,000 tons of rolled-steel products annually.

"(c) It will facilitate the transition of the Geneva steel plant from wartime to peacetime production.

"(g) It will encourage and foster postwar employment opportunities not only in the Geneva steel plant but also in steel-consuming industries in the West.

"(o) It will promote production, employment of labor, and utilization of the productive capacity and the natural resources (especially iron ore and coal) and the agricultural resources (through steel used in agricultural machinery) of the country.

"(p) It will foster the development in the West of a new independent enterprise. The production of steel at the Geneva steel plant should serve to develop additional consuming markets for steel products in the territory naturally served by the plant, particularly in this post-war period when many companies are reported to be considering the location of additional steel-consuming facilities. One of the most important factors from the standpoint of consumers of steel is to have an assured source of supply. The operation of the Geneva steel plant as a part of the integrated operations of U. S. Steel should tend to foster the location of steel-consuming manufacturing plants in the Western States.

"In addition to meeting applicable objectives of the Surplus Property Act set forth in above section (7) of this memorandum the bid of U. S. Steel provides the following additional advantages to the government:

"(b) Assurance of future operations.—It offers the highest possible degree of assurance for the continued and perpetual operation of the plant.

"(e) Additional facilities.—The bid obligates U. S. Steel to spend \$18,600,000 of its own funds for additional facilities at the Geneva plant, including facilities for the annual production of 386,000 tons of hot-rolled coils. The U. S. Steel, in its bid, further proposes to spend an additional \$25,000,000 out of its own funds for a cold reduction mill having an annual production of 3325,000 tons of cold reduced sheets and tin plate to utilize the above 386,000 tons of hot rolled coils.

"The U. S. Steel, in explanation of its bid, contemplates further expenditures out of its own funds for installations and changes at the Geneva steel plant in the future to meet changing market conditions or operating practices."

48. Under date of June 17, 1946, the Attorney General of the United States advised the Administrator, War Assets Administration, that the proposed sale of Geneva to a wholly-owned subsidiary of U. S. Steel did not, in his opinion and for the reasons stated by him, constitute a violation of the antitrust laws.

49. The Geneva steel plant, was sold and possession transferred to a subsidiary of U. S. Steel on June 19, 1946 and officials of U. S.

Steel immediately set about devising ways to provide its plate and structural mills with sufficient production to assure the successful operation of the plant. These mills have annual rated capacities of 750,000 tons of plates and 250,000 tons of shapes, respectively, compared with an estimated plate consumption on the Pacific Coast of 225,000 tons of plates. Initial arrangements had been made by U. S. Steel subsidiaries to transfer the production of 386,000 tons annually of hot-rolled coils for the cold reduction mills of Columbia Steel Company at Pittsburg, California, from the Birmingham, Alabama, mills of a U. S. Steel subsidiary to the Geneva steel plant, despite the fact that U. S. Steel's Chief Engineer had advised its Board of Directors that it would have been more economical and profitable for U. S. Steel to have supplied such hot-rolled coils from Birmingham rather than to make the large additional investment in Geneva. Following this, efforts were made to develop an assured load for the structural mill. The officials of U. S. Steel concluded that it was necessary for U. S. Steel subsidiaries to go into the fabricating business on the West Coast and produce fabricated steel products from rolled steel product of the Geneva plant. This would provide an outlet for such rolled steel products and would give assurance of additional loads on the plate and structural mills that would contribute to the successful operation of the Geneva steel plant.

50. Prior to the purchase of the Geneva steel plant by U. S. Steel; and during September, 1945, Alden G. Roach, President of Consolidated, approached Mr. Fairless and indicated that he would like to sell the business and properties of his Company. Mr. Roach again mentioned the subject to Mr. Fairless in February or March of 1946 and Mr. Fairless then stated that U. S. Steel was restudying its decision not to bid for the Geneva steel plant and he did not want to discuss Mr. Roach's suggestion until the Geneva matter was disposed of one way or the other. Mr. Roach stated to Mr. Fairless that he would like to sell Consolidated's business to a Company with good management that needed fabricating facilities on the west coast for the reasons that he would realize for his stockholders the equity that had been built up for them in his Company, would give assurance of continued employment to his employees, and would do a community job that would be beneficial.

51. Mr. Roach had also considered the possibility of selling Consolidated's business and properties to Bethlehem Steel Company and had some preliminary negotiations with Bethlehem. Mr. Roach had also been approached by a representative of the Kaiser Company concerning a possible affiliation between Consolidated and the Kaiser Company.

52. Following the decision of the officials of U. S. Steel to go into the fabricating business on the west coast, Mr. Fairless decided that it was advisable to investigate the acquisition of the existing facilities of Consolidated, since they were fitted to the needs of U. S. Steel and similar fabricating plants would require two or perhaps three years to build under existing conditions.

53. Mr. Fairless then called Mr. Roach regarding his proposal to sell Consolidated's business and properties and made arrangements with him for an investigation of such business and properties by a representative of U. S. Steel during the month of August 1946. As a result of that investigation, U. S. Steel estimated that it would probably cost at present prices about \$14,000,000 and take three years to build plants such as Consolidated owned; that the Consolidated properties had a depreciated value of \$9,800,000 and it would be necessary, if U. S. Steel were to acquire them, to spend about \$1,000,000 to make changes that would be considered advisable.

141 54. Mr. Fairless then appointed a committee of officials of U. S. Steel of Delaware to conduct negotiations with Mr. Roach for the purchase of the Consolidated properties. An agreement was reached between the U. S. Steel Committee and Mr. Roach, after arms' length negotiations, for the purchase of the properties by Columbia for about \$8,250,000.

55. The purchase agreement of December 14, 1946 was then made and executed by Consolidated and Columbia and provides for the purchase by Columbia for cash of certain business properties and assets of Consolidated Steel Corporation and its subsidiaries, consisting principally of its fabricating plants, inventories, work in process, and good will. The purchase agreement contains no provisions barring Consolidated from continuing in the business of fabricating steel products.

56. The purchase agreement was made by Columbia with the approval and assistance of U. S. Steel and U. S. Steel of Delaware for sound business reasons and with no intent to restrain trade and commerce, eliminate competition or a competitor, or to monopolize the production and sale of fabricated steel products in the 11 states.

57. A major purpose of the defendants Columbia, U. S. Steel and U. S. Steel of Delaware in making the purchase agreement was to provide an outlet for the products of Geneva steel plant which would give further assurance of its successful operation and thereby furnish satisfactory employment to almost 6,000 employees and fulfill the obligation to the government and to the citizens of the West that U. S. Steel would to the best of its ability operate the plant successfully and in the interest of the building of the industrial West.

142 58. The effect of the reduction made by U. S. Steel subsidiaries in prices on rolled steel products produced at the Geneva steel plant has been to benefit fabricators and other users of such products in the western states and to create an additional competitive disadvantage for U. S. Steel subsidiaries in the sale of fabricated structural steel products in those states.

59. The evidence does not disclose illegal conduct on the part of U. S. Steel or its subsidiaries in relation to Sections 1 or 2 of the Sherman Act.

60. The purchase agreement does not have the effect of eliminating substantial competition in the sale of rolled steel products or in the manufacture and sale of fabricated steel products and the consummation of the purchase will not eliminate substantial competition in the sale of rolled steel products or in the manufacture and sale of fabricated steel products.

61. In making the purchase agreement, Columbia, U. S. Steel, and U. S. Steel of Delaware have not concertedly attempted to monopolize the production and sale of fabricated steel products in the Consolidated market.

62. The purchase agreement of December 14, 1946, was made for a sound and lawful business purpose.

63. The consummation of the purchase agreement will not unreasonably restrain trade and commerce in rolled steel products or fabricated steel products or be prejudicial to the public interest.

64. Said consummation will not tend to create a monopoly in the production and sale of fabricated steel products.

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#### *Conclusions of law*

1. The acquisition of the structural fabricating business of Consolidated by U. S. Steel will not unreasonably restrain trade and commerce in rolled steel products or fabricated steel products in violation of Section 1 of the Sherman Act as alleged by the complaint.

2. Said acquisition will not tend to create a monopoly in the production and sale of fabricated steel products in violation of Section 2 of the Sherman Act as alleged by the complaint.

3. The evidence fails to establish any violation of the Sherman Act alleged by the Complaint.

4. The defendants are entitled to a judgment dismissing the complaint on the merits.

(S) RICHARD S. RODNEY, J.

Dated November 7, 1947.

144 In the District Court of the United States for the District of Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

vs.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION, UNITED STATES STEEL CORPORATION, AND UNITED STATES STEEL CORPORATION OF DELAWARE, DEFENDANTS

Robert L. Wright and W. Wallace Kirkpatrick, Special Assistants to the Attorney General, and John F. Sonnett, Assistant Attorney General, of Washington, D. C., and John J. Morris, Jr., United States Attorney, of Wilmington, Del., for plaintiff.

Alfred Wright, of Los Angeles, Calif., and Aaron Finger (Richards, Layton & Finger) of Wilmington, Del., for defendant Consolidated Steel Corporation.

Nathan L. Miller of New York City, Roger M. Blough and Merrill Russell of Pittsburgh, Pa., and Edwin D. Steel, Jr., (Morris, Steel, Nichols & Arshlt), of Wilmington, Del., for defendants Columbia Steel Company, United States Steel Corporation, and United States Steel Corporation of Delaware.

*Opinion*

RODNEY, District Judge:

145 Comprehensive findings of fact and consequent conclusions of law have been separately filed. This opinion merely epitomizes such findings and conclusions with such comment as may seem material.

This is an action brought by the government against the named defendants for alleged violations of the Sherman Act (15 U. S. C. A. Secs. 1 et seq.). The controversy grows out of a contract dated December 14, 1946, looking toward the acquisition by Columbia Steel Company for a consideration of some \$8,000,000.00 of all the assets and goodwill of Consolidated Steel Corporation and of four of its wholly owned subsidiaries, viz, Western Pipe and Steel Company of California, The Steel Tank and Pipe Company of California, Consolidated Shipyards, Inc., and Consolidated Steel Corporation of Texas, collectively referred to as Consolidated. Abbreviations or corporate names will be freely indulged. Columbia is a wholly owned subsidiary of United States Steel Corporation, one of the defendants, as is also United States Steel Corporation of Delaware, also a defendant, which latter company allegedly renders technical assistance to all of the U. S. Steel subsidiaries engaged in rolling and fabricating steel products and controls their business policies.

The geographical territory denominated as the "Consolidated Market" includes eleven states, Arizona, California, Idaho, Louisiana, Montana, Nebraska, New Mexico, Oregon, Texas, Utah, and Washington. Within this territory it is claimed that Consolidated is the largest fabricator of steel products other than fabricators which are owned or controlled by producers of roller steel products. It is also claimed that, within the designated area, U. S. Steel, through its subsidiaries, and especially through Columbia, sells a substantial part of the rolled and fabricated steel products there sold.

The government therefore contends that the effect of the agreement of sale, as above mentioned, is to eliminate substantial competition in the sale of rolled steel products and the manufacture and sale of fabricated steel products, and therefore is an  
146 unreasonable restraint of trade in violation of Section 1 of the Sherman Act. The government also contends that the agreement is an attempt by U. S. Steel to monopolize the production and sale of fabricated steel products in the area described in violation of Sections 1 and 2 of the Sherman Act.

The several defendants deny that the agreement or its consummation will be in restraint of trade or injurious to the public interest. They insist that both the purchase and sale are dictated solely by the consideration of sound business reasons, and will have no tendency to prejudice the public interest.

It is agreed that the facts in this case are not in sharp dispute. It is the conclusion to be drawn from the facts that constitutes our difficulty. The government contends that while the consummation of the agreement of sale would not constitute a complete monopolization of the territory in violation of Section 2 of the Sherman Act, yet such action would result in the elimination of substantial competition and be in restraint of trade. The defendants on the other hand contend that as competition in the past has been unsubstantial and meagre, so the consummation of the agreement will leave that competition still negligible in character. They contend that the contract in question was solely dictated by sound business policies and integration, the effect of which will result in the promotion of the public interest.

It is, since *Standard Oil Co. v. United States*, 221 U. S. 1, the well-settled rule that it is not every restraint of trade that comes within the prohibition of the Sherman Act, but only such a restraint as is an unreasonable one under the facts of the particular case. It is also true that we are not left without some criteria to determine the reasonableness or unreasonableness of the restraint involved, for it has been held that "the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the

147 due course of trade. It is also clear that an unreasonable restraint may be considered in connection with a limited geographical area. The government contends that the proposed agreement would unreasonably restrain trade within the states heretofore named, which are here spoken of as the "Consolidated Market." The defendants deny such effect or that any purpose of the agreement has such object in view.

Before detailed consideration of the activities of the respective parties it may be well to state our general conception of the terms herein used. The complaint alleges the agreement will eliminate substantial competition in the "sale of rolled steel products and in the manufacture and sale of fabricated steel products." The complaint defines "rolled steel products" as the raw materials from which the fabricated steel products are made and consists of "steel plates, sheets, shapes, and bars."

We must now consider the designated companies and their subsidiaries and determine how far the activities of one may impinge upon or compete with the other. Because the consummation of the agreement would remove Consolidated as an independent entity, we may first consider the nature of its activities: first, as competitive with some subsidiary of the United States Steel Corporation and, secondly, insofar as its activities concern the industry as a whole in the Consolidated Market.

Consolidated is a company of considerable size and value, the agreement of acquisition here considered being for a consideration upwards of \$8,000,000.00. Consolidated does not manufacture or produce any rolled steel products and is not affiliated with any steel producing company. Its activities are confined to fabricating steel and for this purpose it owns and operates eight plants, six in California, one in Arizona, and one in Texas. For the purposes of this case a distinction may be drawn between

148 two classes in the development of steel products, viz, a fabricator of such products and a manufacturer. A fabricator is one who contracts to construct a specific product such as a building, bridge, or other structure according to special design and specification. A manufacturer, on the other hand, is a producer of finished steel products by means of repetitive processes resulting in various standard types of merchandise. Consolidated is purely a fabricator in accordance with this distinction and not a manufacturer.

In the fabrication of steel, insofar as this case is concerned, there are two general classes of fabrication, viz, structural fabrication and plate fabrication. Structural fabrication includes bridges, steel buildings, and structural frames. Plate fabrication is somewhat more diversified and consists of pressure vessels such as cylin-

dricl containers, bubble and cracking towers used in the oil industry, penstock or piping, well casing, corrugated culverts, and other somewhat similar articles.

Consolidated is a fabricator of both structural and plate products although only two of its eight plants are equipped to fabricate structural products and the fabrication of plate products represents some 70% of its activities.

In order to determine the extent of existing competition between Consolidated and any or all of the subsidiaries of the United States Steel Corporation within the geographical area here considered, it will be necessary to contrast the activities of Consolidated and the activities of some subsidiary of U. S. Steel within the specified line of activities. This will involve:

(1) A comparison between activities of Consolidated as to structural fabrication within the territory and the activities of the only two subsidiaries of U. S. Steel proven to be involved in that line of endeavor, viz, American Bridge Co. and Virginia Bridge Co.;

(2) A comparison between the activities of Consolidated as to plate fabrication from rolled steel plates and the activities of some one or more of the subsidiaries of U. S. Steel. There is no evidence of the activity of any subsidiary of U. S. Steel as to plate fabrication other than that of penstock or piping and therefore consideration of this branch of the matter will be confined to that subject.

In order to ascertain the degree of competition between Consolidated and U. S. Steel as to structural fabrication in any one year, some care must be exercised. Figures are illusive and consolidation of statistics depends upon many factors. Bookings are not entirely reliable because they are apt to spread over a considerable period of time and do not accurately represent annual operations. Bookings, sales, and extent of business are of value only when the line of activity of the two companies is the same and two companies are, in fact, competitive. This competitive relationship can best be shown by a comparison for the last ten years of that work which was sought, at least in part, by both Consolidated and U. S. Steel and other competing companies.

*Data for the ten-year period 1937-1946*

	Number of Jobs	Tons
Bid by U. S. Steel	2,409	1,273,182
Awarded to U. S. Steel	839	499,605
Lost to competition	1,570	773,547
Lost to Consolidated	35	24,162
Lost to others than Consolidated	1,535	748,385
Percent of total lost to Consolidated	1.5	1.9
Percent of total lost to others than Consolidated	63.6	58.6
Percent of jobs lost that were taken by competitors other than Consolidated	97.8	96.9

The exhibit from which these figures are taken shows the detailed diversification of all structural fabrication included in the 150 jobs sought by U. S. Steel and shows that U. S. Steel lost to Consolidated only 11½% of these jobs and less than 2% of the tonnage, while parties other than either U. S. Steel or Consolidated were successful in over 97% of the jobs and 96% of the tonnage. Indeed, the number of jobs as to which Consolidated and U. S. Steel were actually competitive in the sense that both bid was quite small as compared to the total number of bids made by both companies. Of 8,620 bids made by one or both of the companies, there were only 166, or less than 2%, bid on by both.

Substantially the same result is obtained from a study of an exhibit showing the details of bidding by Consolidated for various types of structural fabrication as to some of which U. S. Steel, as well as other competitors, also bid.

*Data for the ten-year period 1937-1946*

	Number of jobs	Tons
Bid by Consolidated	6,377	578,847
Awarded to Consolidated	2,390	159,907
Lost to competition	3,987	418,830
Lost to U. S. Steel	40	34,920
Lost to others than U. S. Steel	3,947	379,930
Percent of total lost to U. S. Steel	6	6.7
Percent of total lost to others than U. S. Steel	61.9	65.6
Percent of jobs lost that were taken by competitors other than U. S. Steel	99.0	90.7

It is apparent from this exhibit that U. S. Steel only successfully competed in six-tenths of one percent of the jobs and six percent of the tonnage involved, while other competitors succeeded in obtaining 99 percent of the jobs and over 90 percent of the tonnage.

From the foregoing it is not apparent to me that the competition between U. S. Steel and its subsidiaries on the one hand, and 151 Consolidated on the other, as to structural fabrications is so substantial as to constitute by its removal a prejudice to the public interest.

We must now consider such competition as exists in plate fabrication in relation to the manufacture and sale of penstock or piping. Both Consolidated and subsidiaries of U. S. Steel, especially the National Tube Company, make and sell steel pipe and tubing. True competition can only be determined by an examination as to whether their products do fairly cover the same field and uses and whether one is reasonably competitive of the other.

At several of its plants Consolidated fabricates and sells piping of various sizes. The U. S. Steel Corporation, through the National Tube Co., fabricates and, through the Oil Well Supply Co., sells, certain classes of piping. Much testimony was devoted to

the explanation of the differences between the types of piping, both as to their uses and general character of fabrication. This testimony, uncontradicted as it is, clearly establishes that while there is some overlapping or duplication in the sizes of the piping, yet between the two kinds there is no substantial competition. Consolidated makes only an electric welded pipe by one of two processes. This piping is made from a flat rolled plate or strip, rolled into a cylindrical form and welded. It is a comparatively light walled pipe for low pressure purposes solely, such as irrigation, water transmission and water well casings. U. S. Steel makes no pipe from a flat rolled plate with the consequent seam. It makes only forged steel pipe from a solid round, forged and rolled and without seam. It is essentially a heavy walled pipe for high pressure purposes only and is chiefly used in the oil and gas industry. The testimony shows a substantial price range in favor of the U. S. Steel process and that no substantial competition exists. It is in evidence that the only recent instance of the alternative use of one pipe for the other grew solely out of the impossibility of obtaining the kind desired.

152 This then brings me to a consideration of the suggestion that the purchase of Consolidated by U. S. Steel and the possible removal of Consolidated as a potential purchaser of steel products from competitors other than U. S. Steel constitutes a substantial restraint of trade, detrimental to the public interest and an attempt to obtain a monopoly. This matter differs from the question of competition heretofore considered because here the question of detriment to the public interest is more diluted and concerns primarily the possible loss to a competing producer of steel by the removal of a potential customer, viz. Consolidated. This loss to competitors of a potential customer might be brought about by various causes which need not be herein discussed. It is unnecessary to consider the question as to how far the Sherman Act deals with this feature of restraint as affecting the public interest, because an examination of the figures involved compels the conclusion that the subject matter of the suggestion lacks substantiality. A consolidation of certain exhibits makes clear certain figures. It shows the total sale of rolled steel products in the eleven states constituting the Consolidated Market for the decade last past, including the abnormal post-war years, when demand has exceeded the supply; it shows that while at times purchases by Consolidated from subsidiaries of U. S. Steel exceeded purchases from other competitors, yet in other years this proportion was reversed, each party exceeding in five years of the decade. This combined table shows that the average annual purchases by Consolidated from subsidiaries of U. S. Steel bore

to the total sales of rolled steel products in the Consolidated Market but the figure of 1.58 percent, and that the average annual purchases by Consolidated in the same period and from parties other than U. S. Steel subsidiaries and disconnected therewith was the figure of 1.38 percent of the total sales of rolled steel products in the Consolidated Market. Such consolidated table is as follows, there being minor discrepancies between the tables submitted by the various parties:

	Total distribution of rolled steel products in U. S.	Total sales of rolled steel products in the Consolidated market	Total purchases by Consolidated from subsidiaries of U. S. Steel Corp.	Percent of column 3 to column 2	Total purchases by Consolidated from others than U. S. Steel Corp.'s subsidiaries	Percent of column 5 to column 2
1937	38,345,156	4,362,900	59,677	1.4	43,609	1
1938	39,396,398	2,670,000	23,240	.9	20,810	.8
1939	47,955,175	3,630,000	43,179	1.2	26,685	.75
1940	45,965,971	4,337,990	51,982	1.2	65,662	1.5
1941	60,942,979	6,008,757	88,316	1.5	75,112	1.3
1942	60,791,052	8,489,204	181,492	2	158,219	1.8
1943	62,210,261	10,124,831	170,684	1.7	233,496	2
1944	63,250,519	9,587,503	120,417	1.3	270,115	2.9
1945	56,602,322	7,232,590	67,371	1	157,902	2.2
1946	48,983,777	6,000,000	83,846	1.7	94,823	1.6
Average	493,213,612	98,443,775	890,204	13.9 1.39	1,146,431	15.8 1.58

It is, of course, true that upon the consummation of the agreement certain companies heretofore furnishing steel to Consolidated may find that outlet difficult to continue; it is true that subsidiaries of U. S. Steel will presumably furnish to and for the business requirements heretofore enjoyed by Consolidated such portions of rolled steel products as may be available for such demand, but such result of and by itself does not seem contrary to either the language or spirit of the Sherman Act.

Both parties have discussed the reasons prompting the proposed purchase and sale herein discussed and, what is not unusual, have reached diametrically opposite conclusions. It would seem that in determining the legality of transactions challenged under the Sherman Act the underlying reasons for the proposed transaction should be proper subjects of inquiry. This is not to say

that a transaction having its inception upon the soundest possible business reasons could be approved if its consummation be detrimental to the public interest and in restraint of trade, but in determining the extent of public interest the reasons prompting the transaction may be inquired into. In considering the reasons prompting the transaction the discussion will be limited to those reasons affecting U. S. Steel. The reason prompting the directorate of Consolidated to enter into the agree-

ment of sale seems clear and undisputed. It was that during the war years the company had accumulated a substantial equity in the form of surplus and that the directorate thought it for the best interests of the stockholders that this surplus be distributed to the stockholders rather than be utilized and exposed to risk in the further prosecution of business in the then uncertain post-war period. The soundness of this reason and the accuracy of this forecast is not for this court to determine, but it is in evidence that Consolidated, before entering into the contract in question, had made preliminary advances of a similar nature to other parties including a chief competitor of U. S. Steel in the country-wide field as well as in the Consolidated Market. The agreement here involved is, too, subject to approval by stockholders of Consolidated.

The U. S. Steel Corporation and its subsidiary, the Columbia Steel Company, insist that not only is the contract of proposed sale not violative of any provision of law but was actuated solely by the soundest business reasons affecting not only the defendants themselves but as enhancing the public interest. Even a condensed statement of these reasons involves some undesirable prolixity.

In May, 1941, and during the war period, the government asked the U. S. Steel Corporation to erect a very large steel plant at Geneva, Utah, having a listed capacity of producing 1,000,000 tons of steel annually. The plant was erected and operated by U. S. Steel without charge or fee and the cost of the plant was in excess of \$190,000,000. In January, 1945, the U. S. Steel

155 Corporation notified the government that when the time came to consider a sale or lease of the plant it would be interested in discussing the possibilities of such action. Opposition to the acquisition of the Geneva plant by U. S. Steel developed both within that corporation and among the interested public and, while war was still continued, the U. S. Steel Company notified the government that it was no longer interested in the acquisition of the plant. Subsequently the Surplus Property Administrator for the government took active steps relative to the Geneva plant. All 30 of the integrated companies of the country having a capacity of 300,000 ingot tons were circularized and answers were received from 28. The sale of the plant was advertised and U. S. Steel was expressly requested by the government to submit a bid. Some seven bids were received. The bid of U. S. Steel, including purchase price of plant and inventories and obligation to install necessary facilities for conversion to peace-time activities, amounted to approximately \$66,000,000, together with a proposal to expend an additional \$25,000,000. The bid of U. S. Steel, after a very full evaluation, was accepted

and, in such acceptance, certain reasons were assigned which, in view of the contentions of the defendant, may have materiality. The government found the acquisition by U. S. Steel would:

"Assure the most effective use of the Geneva Steel plant for war purposes and common defense.

"Stimulate full employment including employment of war veterans.

"Foster post-war employment opportunities not only in the Geneva plant but also in the steel-consuming industries in the West.

"It will promote production, employment of labor and utilization of the productive capacity and natural resources of the country."

The sale of Geneva to the U. S. Steel Corporation was passed upon and approved by the Attorney General of the United States.

156 Immediately upon the acquisition of Geneva steps were taken looking to the outlet of its product. It was obvious that to maintain employment in a plant with a listed capacity of 1,000,000 tons and an estimated average 5-year production of from 456,000 to 600,000 tons, the product must be provided for. With some disregard of economy some 386,000 tons of hot-rolled coils contemplated for production at an Alabama plant were diverted to Geneva. In order to supplement this, so-called, "back-log" of requirement it was deemed essential either that U. S. Steel within the Consolidated Market erect new fabricating facilities with the development of consequent sales forces or otherwise obtain such facilities. Plans had been considered some time previously for the erection of fabricating plants but definite plans had not materialized.

In November 1945, when U. S. Steel had no interest in the acquisition of the Geneva plant and had so notified the government, Mr. Roach, President of Consolidated, approached Mr. Fairless, President of U. S. Steel, with a view of the acquisition of Consolidated by U. S. Steel as hereinbefore recited. He received no encouragement in his effort. In the early Spring of 1946 after U. S. Steel had again become somewhat interested in Geneva, but before its bid therefor, Mr. Roach again approached Mr. Fairless as to the purchase. Mr. Roach was told that until the course of U. S. Steel with reference to the Geneva plant was settled the question of acquisition of Consolidated could not be discussed.

In April 1946, U. S. Steel submitted its bid for the Geneva plant, which was subsequently accepted. Thereafter it became increasingly necessary to provide sufficient outlet for Geneva products and especially when the postwar abnormal demand for steel products should abate.

To the requirements of Geneva other economic considerations seemed to require the establishment by U. S. Steel of fabricating facilities in the Consolidated Market of Western States.

157 Before and during the war a majority of its shipments into the Consolidated Market was sold to agencies of the federal government. These were made on Land Grant freight rates considerably lower than commercial rates and these Land Grant rates have all been abolished and commercial freight rates on fabricated structural steel shipped from the East have been increased. To maintain competition it was considered essential that fabricating facilities within the Consolidated Market be provided. It was ascertained that new construction of these fabricating facilities due to increased costs of building and scarcity of material would be difficult and, in any event, would involve several years' delay. Accordingly, negotiations were reopened with Consolidated which culminated in the agreement which is the subject matter of this litigation.

The government contends that the consummation of the proposed agreement would substantially eliminate competition in designated fields of effort and in violation of the Sherman Act. The government contends that since, in its judgment, an illegal restraint of trade was the effect of the proposed agreement and since the contracting parties must have intended the natural consequences of those acts, so U. S. Steel must have intended the illegal consequences which would flow from the agreement.

I find that the proposed agreement would not substantially remove competition, and it is, therefore, not inappropriate to state the reason of the purchase as sworn to by the President of the U. S. Steel Corporation.

In answer to a question as to what was the purpose and object in negotiating and consummating the agreement with Consolidated, the answer was:

"The object was just one, one motive and only one motive, and that was to secure sufficient backlog to operate the newly acquired Geneva Steel plant on a successful basis from the standpoint of furnishing satisfactory employment to almost 6,000 employees and also fulfilling the obligation which we had made to the government and to the citizens of the West, that we would, to the  
158 best of our ability, operate that plant successfully and in the interests of building up the industrial west. That was the only objective that I had at that time, and the only one I still have."

A remaining inquiry must determine whether the foregoing application of facts is inconsistent with any established principle of law.

The government cites a number of authorities as sustaining the position taken by it. It relies quite strongly on *United States v. Yellow Cab Co.*, 331 U. S. —, 67 S. Ct. 1560. That case, as I view it, did not change any preexisting rule to the effect that the Sherman Act contemplated only such restraints of trade as were unreasonable in character and extent nor make the Act apply where merely some appreciable restraint was involved. The cited case arose from a motion to dismiss the complaint. It was held that the amount of interstate trade or commerce was immaterial in determining whether an unreasonable restraint had been charged in the complaint. The court says of the Sherman Act, "Section 1 of the Act outlaws unreasonable restraints on interstate commerce regardless of the amount of the commerce affected." The court also says, "The test of illegality under the Act [Sherman] is the presence or absence of an unreasonable restraint on interstate commerce." Nothing in the *Yellow Cab* case seems inconsistent with the views herein reached.

The government also relies upon *United States v. Reading Co.*, 253 U. S. 26, and *United States v. Lehigh Valley R. R.*, 254 U. S. 255. The cited cases seem not determinative of any issue involved in this case. In both cases the objectionable restraint of trade was based upon a deliberate calculated purchase for control accompanied by no normal expansion to meet the demands of business growing as a result of superior or enterprising management. The bases upon which these cases were determined seem lacking in the present case.

The case of *International Shoe Company v. Federal Trade Commission*, 280 U. S. 291, 50 S. Ct. 89, has much of 159 interest. While it involved proceedings under the Clayton Act, yet those same principles are applicable to alleged violations of the Sherman Act. The cited case held that "mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisition as probably will result in lessening competition to a substantial degree \* \* \*; that is to say, to such a degree as will injuriously affect the public. Obviously, such acquisition will not produce the forbidden result if there be no preexisting substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, to begin with, is itself without real substance." In determining the extent of competition the court considered, with other matters of fact, the testimony of officers of the accused company as to the meagerness of such competition.

From a consideration of all the matters submitted to me, including an examination of the documentary evidence, I am of the

opinion that the consummation of the proposed agreement is not in violation of Section 1 of the Sherman Act.

The alleged violation by U. S. Steel of Section 2 of the Sherman Act as an attempt to monopolize the steel fabricating business of the Consolidated Market will not be considered at great length. The plaintiff concedes that proof of a violation of Section 2 requires something more specific than even an unreasonable restraint of trade. The plaintiff concedes that even after the consummation of the proposed agreement the monopolization would not be complete. Having found that the acquisition of Consolidated Steel Corporation would not materially affect competition within the Consolidated Market and so not unreasonably restrain trade and commerce in rolled and fabricated steel products, in violation of Section 1 of the Sherman Act, then it will require considerable additional circumstances to find from this  
160 same acquisition alone an intent to monopolize the production and sale of fabricated steel within the same market.

In other words, if the acquisition of the assets of Consolidated by U. S. Steel constitutes no offense under Section 1 of the Sherman Act as not having a tendency to illegally restrain trade or commerce, then that same acquisition, legal in itself, must be greatly augmented to constitute an attempt to create a monopoly in violation of Section 2.

The two sections of the Act, while contemplating separate offenses, do overlap in the sense that a monopoly under the second section is a species of restraint of trade under Section 1. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 226.

In the present case the government concedes "The two sections are, of course, directed to the same end and the second section simply prohibits a more specific form of trade-restraining conduct than the first."

In *Standard Oil Co. v. United States*, 221 U. S. 1, 61, the court said, " \* \* \* The second section seeks, if possible, to make the prohibition of the act all the more complete and perfect by embracing all attempts to reach the end prohibited by the first section, that is, restraints of trade, by any attempt to monopolize or monopolization thereof, even though the acts by which such results are attempted to be brought about or are brought about be not embraced within the general enumeration of the first section."

It is unnecessary in this case to determine that there may be an unreasonable restraint of trade which does not constitute a monopoly, though there can be no monopoly which does not constitute an unreasonable restraint of trade, as held in *United States v. Whiting*, D. C., 212 F. 466, 478.

In this case the only matter suggested as violative of Section 2 is the agreement hereinbefore mentioned and the effects of its con-

summation. To me it would seem that for an act to be violative of Section 2 as creating a monopoly or intending to create such monopoly, such act, if accomplished, would have a direct tendency to unduly restrain trade and commerce. Since I have reached the conclusion that this effect would not be present under Section 1 of the Act, so I think there is no violation of Section 2.

In the consideration of alleged violations of Section 2 of the Act the reasons prompting the parties to take the proposed action acquire greater force and relevancy than in violations of Section 1. Section 2 covers not only a completed monopolization but also an attempt to monopolize. The ascertainment of the bases upon which an attempt to monopolize is founded can only be had after a full consideration of the reasons prompting the proposed action. Some intent beyond the mere intent to do the act is basically present in an attempt to monopolize<sup>2</sup> and the reasons for action take on additional relevancy in determining this question of attempt. Those reasons for action have been heretofore stated and are particularly applicable in the consideration of Section 2, but will not be here restated.

It may be that in determining questions under Section 2 of the Sherman Act the exact percentage of interference with interstate trade or commerce may be immaterial in view of *United States v. Yellow Cab Co.*, supra.<sup>3</sup> It must be true, however, that the proportional effect of a given action must have a bearing as to whether a monopoly has either been accomplished, or intended. If this be not true, then no company having a very small but appreciable share of control of a given market or subject matter can ever acquire any additional share no matter how small it be, provided it be appreciable.

The action made unlawful by Section 2 of the Statute is the monopolization of or attempt to monopolize an appreciable part of commerce or trade. No attempt to control an appreciable part of commerce or trade could be a monopolization or attempt to monopolize unless the proportion of control by the party so attempting had some measurable relation to the subject matter within the given area. This area may be of restricted extent, but there must be some yardstick or measure of computation by which the interference with trade or commerce may be designated either, on the one hand, as an attempt to monopolize or, on the other, as a lawful business effect.

In *United States v. Aluminum Co.*, 2 Cir., 148 F. 2d 416, 424, the court considered the extent of control as constituting a monop-

<sup>2</sup> *United States v. Aluminum Co. of America*, 148 F. 2d 416, 431, 432.

<sup>3</sup> See "The Supreme Court and a Competitive Economy" by Ellinkoff & Barnard, 47 Cal. Law Rev. 914, 930.

oly in a given market. By using differing methods of computation the resultant control was found to be 33% or 64% or over 90%. In holding that over 90% would constitute a monopoly the court said, "It is doubtful whether 60 or 64% would be enough; and certainly thirty-three percent is not."

In the present case there is no evidence showing that even after the consummation of the proposed agreement the percentage of control by U. S. Steel would be in conflict with the formula adopted in the cited case.

I am of the opinion that the evidence in the case fails to establish any violation of the Sherman Act as alleged in the complaint.

Dated November 7, 1947.

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In the District Court of the United States  
for the District of Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

vs.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

*Final judgment*

On this Fourteenth day of November 1947, the above-entitled action having come on to be heard upon final hearing on the merits, and evidence, both oral and documentary, having been presented and considered and briefs on behalf of the respective parties having been filed and considered, and the Court having filed its Opinion herein and also having made and filed its Findings of Fact and Conclusions of Law dated November 7, 1947, it is ordered, adjudged, and decreed:

(1) That the plaintiff is not entitled to the relief prayed in the Complaint and that this action be and it hereby is dismissed with prejudice on the merits;

(2) The temporary order heretofore entered herein on June 3, 1947, may remain in effect pending a review of this judgment by the Supreme Court, provided that plaintiff shall, within five (5) days hereof, file and thereafter diligently prosecute an appeal to the Supreme Court.

(S) RICHARD S. RODNEY,  
United States District Judge.

Approved as to form:

(S) JOHN J. MORRIS, Jr.,  
United States Attorney.

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In the District Court of the United States

[Title omitted.]

*Petition for appeal*

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final order and decree of this Court entered on the 14th day of November, 1947, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such case made and provided.

(S) John F. Sonnett,  
JOHN F. SONNETT,  
*Assistant Attorney General.*

(S) Robert L. Wright,  
ROBERT L. WRIGHT,

(S) W. Wallace Kirkpatrick,  
W. WALLACE KIRKPATRICK,  
*Special Assistants to the Attorney General.*

Dated this 14th day of November 1947.

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In the District Court of the United States

[Title omitted.]

*Assignment of errors and prayer for reversal*

The United States of America, plaintiff in the above-entitled cause in action, with its petition for an appeal to the Supreme Court of the United States, hereby assigns error to the final order and decree of said District Court entered on November 14th, 1947, in the above-entitled cause, and says that in the entry of the final order and decree the District Court committed error to the prejudice of the plaintiff in the following particulars.

1. The court erred in dismissing the complaint on the merits.
2. The court erred in finding that the evidence failed to establish any violation of the Sherman Act.
3. The court erred in finding that the acquisition of the structural fabricating business of Consolidated by United States Steel will not unreasonably restrain trade and commerce in rolled steel products or fabricated steel products in violation of Section 1 of the Sherman Act.
4. The court erred in finding that said acquisition will not tend to create a monopoly in the production and sales of fabricated steel products in violation of Section 2 of the Sherman Act.
- 168 5. The court erred in finding that fabricated structural steel products are made principally of steel shapes.
6. The court erred in finding that the rolled steel requirements of Consolidated were not a substantial part of the consumption of rolled steel products in the 11 States constituting the Consolidated market.
7. The court erred in finding that the evidence failed to show that the acquisition of the business of Consolidated by United States Steel will injure any competitor of United States Steel subsidiaries which produces and sells rolled steel products or impair the ability of such competitor to compete with United States Steel subsidiaries in the production and sale of rolled steel products or otherwise restrict or suppress competition in the production or sale of rolled steel products in the 11 States of the Consolidated market, or will, in any way, be detrimental to the public interest.
8. The court erred in finding that the business now owned by Consolidated is not a substantial market for the rolled steel products of producers selling in competition with United States Steel subsidiaries.
9. The court erred in finding that Consolidated does not compete with National Tube Company, a United States Steel subsidiary, in the sale of pipe.
10. The court erred in finding that Consolidated does not compete with Oil Well Supply Company, a United States Steel subsidiary.
11. The court erred in finding that Consolidated does not compete with United States Steel Products Company, a United States Steel subsidiary.
12. The court erred in finding that reports of bookings of fabricated structural steel in the 11 States for 1943 to 1949 were not available.
- 169 13. The court erred in finding that the competition that existed during the 10-year period from 1937 to 1946 between Consolidated and United States Steel subsidiaries in the manu-

facture and sale of fabricated steel products was not substantial.

14. The court erred in finding that such competition as has existed between Consolidated and United States Steel subsidiaries has been limited to occasional sales of fabricated structural steel products.

15. The court erred in finding that the application of the land-grant freight rates to shipments of fabricated structural steel reduced considerably the disadvantage in transportation costs which the United States Steel subsidiaries experienced in the sale of fabricated structural steel to agencies of the Federal Government for delivery to West Coast destinations in competition with West Coast fabricators.

16. The court erred in finding that sales of fabricated structural steel made during wartime and for war jobs afforded no sound basis for determining the extent of competition between Consolidated and United States Steel subsidiaries.

17. The court erred in finding that increases in commercial freight rates on fabricated structural steel have further increased the competitive disadvantages of the United States Steel subsidiaries in the sale of fabricated structural steel on the West Coast in competition with western fabricators.

18. The court erred in finding that the disadvantage in cost suffered by United States Steel subsidiaries as a result of reduction in price of steel sold on the Geneva price basis eliminates United States Steel subsidiaries from the West Coast market except for specialized products which they are equipped to fabricate economically and sell at higher prices per ton of product.

170 19. The court erred in finding that the abolition of land grant rates, the increase in commercial freight rates, and the operation of the Geneva steel plant to make available to West Coast fabricators supplies of steel plates and shapes at reduced prices have combined to increase the disadvantages of United States Steel subsidiaries operating from eastern plants in competition with western fabricators, except in special circumstances.

20. The court erred in finding that Bethlehem Steel Company and its subsidiaries are the most important structural steel competitor of Consolidated in the western States.

21. The court erred in finding that the acquisition of the fabricating facilities of Consolidated by United States Steel will reduce existing competitive disadvantage which the United States Steel subsidiaries face in competition with Bethlehem and its subsidiaries in the sale of fabricated structural steel products in the western States.

22. The court erred in finding that the acquisition of Consolidated by United States Steel will enable United States Steel sub-

subsidiaries to compete on more even terms with fabricators located on the West Coast in the sale of fabricated steel products.

23. The court erred in finding that competition between Consolidated and United States Steel subsidiaries is not substantial in the sale of fabricated structural steel products in the Consolidated market.

24. The court erred in finding that after United States Steel purchased the Geneva steel plant, the officials of United States Steel concluded that it was necessary for United States Steel subsidiaries to go into the fabricating business on the West Coast and produce fabricated steel products from rolled steel products of the Geneva plant.

171 25. The court erred in finding that the purchase agreement made by United States Steel and its subsidiaries for the purchase of Consolidated assets was made for sound business reasons and with no intent to restrain trade and commerce, eliminate competition, or a competitor, or to monopolize the production and sale of fabricated steel products in the 11 States.

26. The court erred in finding that a reduction in price on rolled steel products produced at the Geneva steel plant made by United States Steel subsidiaries has created an additional competitive disadvantage for United States Steel subsidiaries in the sale of fabricated structural steel products in the 11 western States.

27. The court erred in finding that the evidence did not disclose illegal conduct on the part of United States Steel or its subsidiaries in relation to Sections 1 or 2 of the Sherman Act.

28. The court erred in finding that the purchase agreement does not have the effect of eliminating substantial competition in the sale of rolled steel products or in the manufacture and sale of fabricated steel products, and that the consummation of the purchase will not eliminate substantial competition in the sale of rolled steel products or in the manufacture and sale of fabricated steel products.

29. The court erred in finding that Columbia, United States Steel, and United States Steel of Delaware, in making the purchase agreement with Consolidated have not concertedly attempted to monopolize the production and sale of fabricated steel products in the Consolidated market.

30. The court erred in finding that the purchase agreement was made for a sound and lawful business purpose.

31. The court erred in finding that the consummation of the purchase agreement will not unreasonably restrain trade and commerce in rolled steel products or fabricated steel products or be prejudicial to the public interest.

172 32. The court erred in finding that the consummation of

the purchase agreement will not tend to create a monopoly in the production and sale of fabricated steel products.

33. The court erred in receiving evidence relating to the negotiations for the purchase of the Geneva plant prior to the submission of United States Steel's bid and in relying upon such evidence in making its findings numbered 39 to 45, inclusive.

Wherefore, plaintiff prays that the final decree of the District Court dismissing the complaint on the merits may be reversed and the cause remanded for entry of a decree finding that all of the defendants violated the Sherman Act, and granting appropriate relief.

(S) John F. Sonnett,  
JOHN F. SONNETT,  
*Assistant Attorney General.*

(S) Robert L. Wright,  
ROBERT L. WRIGHT,

(S) W. Wallace Kirkpatrick,  
W. WALLACE KIRKPATRICK,  
*Special Assistants to the Attorney General.*

Dated this 14th day of November 1947.

215 In The District Court of the United States.

[Title omitted.]

*Order allowing appeal and continuing temporary stay*

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 14th day of November 1947, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

It is further ordered that the temporary injunction heretofore issued herein on June 3rd, 1947, shall remain in effect until a final disposition of said appeal is made and a further order is entered herein.

(S) Richard S. Rodney,  
RICHARD S. RODNEY,  
*United States District Judge.*

Dated this 18th day of November 1947.

216 (Citation in usual form showing service on Aaron Finger, et al. omitted in printing.)

218

In the District Court of the United States

*Praeceptum for transcript of record.**To The Clerk, United States District Court, for the District of Delaware:..*

The appellant hereby directs that, in preparing the transcript of the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.

2. Complaint.

3. Answers of Columbia Steel Company, United States Steel Corporation, United States Steel Corporation of Delaware, and Consolidated Steel Corporation.

4. Preliminary injunction enjoining transfer of Consolidated assets or purchase of Consolidated by Columbia.

5. Transcript of the proceedings of the trial.

6. Plaintiff's and defendant's exhibits received in evidence.

7. Findings of fact and conclusions of law.

8. Opinion of the court dismissing the complaint.

9. Judgment dismissing the complaint.

10. Petition for appeal.

11. Assignment of errors and prayer for reversal.

12. Statement as to jurisdiction.

13. Order allowing appeal.

219 14. Citation.

15. Statement calling attention to the provisions of Supreme Court Rule 12 (3).

16. Praeceptum for transcript of record.

17. Proof of service of:

a. Petition for appeal;

b. Order allowing appeal;

c. Assignment of errors and prayer for reversal;

d. Statement as to jurisdiction;

e. Citation;

f. Statement calling attention to the provisions of Supreme Court Rule 12 (3);

g. Praeceptum for transcript of record.

(S) ROBERT L. WRIGHT,

*Special Assistant to the Attorney General.*

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[Clerk's certificate to foregoing transcript omitted in printing.]

224 In the District Court of the United States for the  
District of Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

v.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION and UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

*Reporter's transcript of trial proceedings*

WILMINGTON, DELAWARE,  
*Trial beginning June 16, 1947.*

Before Hon. RICHARD S. RODNEY, U. S. District Court Judge.

*Appearances*

John J. Morris, Jr., Esq., U. S. District Attorney, Robert L. Wright, Esq., and Wallace Kirkpatrick, Esq., Special Assistants to the U. S. Attorney General, for the Government. Nathan L. Miller, Esq., of New York, Merrill Russell, Esq., of Illinois, Edwin D. Steel, Jr., Esq., of Morris, Steel, Nichols & Arsht, and Roger M. Blough, Esq., of Pittsburgh, Pa., for Columbia Steel Company, United States Steel Corporation, and United States Steel Corporation of Delaware. Aaron Finger, Esq., of Richards, Layton & Finger, and John M. Robinson, Jr., Esq., of California, and Alfred Wright, Esq., of California, for Consolidated Steel Corporation.

224—2 Mr. MORRIS. Your Honor has already admitted Mr. Wright pro hac vice in this case. I should like to move the admission of Mr. W. Wallace Kirkpatrick of the New York Bar. He will also represent the Government.

The COURT. I am very glad to admit you, Mr. Kirkpatrick.

Mr. STEEL. On behalf of the Columbia Steel Company, United States Steel Corporation, and United States Steel Corporation of Delaware I desire to move the admission pro hac vice of Nathan L. Miller of the New York Bar, and Merrill Russell of the Illinois Bar.

The COURT. I am very glad to admit you gentlemen.

*Argument of Mr. Wright*

Mr. WRIGHT. May it please the Court, I should like to make a very brief opening statement. In view of the rather extensive dis-

cussion of issues we have had in pretrial proceedings I don't want to take up much time, but I do think before offering our evidence it might be helpful simply to again restate the issues in summary form.

Your Honor will recall that the complaint here charges the violation of Sections 1 and 2 of the Sherman Act against four defendant steel companies. One of them is the Consolidated Corporation of Los Angeles. That company is itself the 224-3 parent of several subsidiaries which will also figure in the evidence, the principal one being the Western Pipe and Steel Company, which was acquired in 1945; the Steel Tank and Pipe Company, and Consolidated of Texas. Those are the groups that I will refer to hereafter simply as Consolidated.

The other defendants in the suit are the United States Steel Corporation, the United States Steel Company of Delaware, and the Columbia Steel Company.

Columbia and U. S. Steel of Delaware are both wholly owned subsidiaries of the U. S. Steel Corporation, and Columbia is the particular subsidiary which entered into the acquisition agreement with Consolidated and its subsidiaries, which is the subject matter of the suit. It is that agreement entered into last December which is alleged to violate the Act.

In general the Court is confronted in this suit with three issues about which there may be factual conflict. Those are, one, Does this acquisition provide for in the agreement restrain substantial competition in the sale of fabricated steel products?

Two, Does it restrain substantial competition in the sale of rolled steel products?

And, three, is it an attempt by U. S. Steel to monopolize the production and sale of fabricated steel products in the 11-state area in which Consolidated makes itself its product?

224-4 Those eleven states are set out in the complaint. They are in the far West and Southwest, and for convenience I will simply refer to those hereafter as the Consolidated market.

Now, it is perfectly clear, I think, from the pleadings that whatever competition of any kind that has existed in the past between Consolidated and U. S. Steel will be eliminated by this acquisition and that the acquisition will also eliminate whatever competition existed in the past between U. S. Steel rolled steel producing subsidiaries and other producers of rolled steel products in selling steel to Consolidated and its subsidiaries. It is equally clear that all potential future competition of this character will be completely eliminated by the acquisition if it is permitted.

The factual inquiry here, then, is narrowed to an examination of the extent and the character of the competition that has existed

in the past as a basis for estimating the extent and the nature of the potential future competition that would be lost through this acquisition. The Sherman Act makes no distinction between the suppression of potential and actual competition, and our proof will be directed to the wholly competitive relationship of the companies that are involved.

Now, insofar as elimination of competition of selling rolled steel products that has existed in the past between U. S. 224—5 Steel subsidiaries and their competitors is concerned, the plaintiff's proof will show that Consolidated and its subsidiaries was a large, substantial consumer of those products; that it has bought most of them in the past from sources other than U. S. Steel; and will also show that the admitted purpose of the acquisition is to foreclose the opportunity that other rolled steel producers have enjoyed in the past to compete with U. S. Steel for this business. We shall argue that under the applicable Sherman Act decisions that proof alone would establish a violation of Section 1 of the Act even if nothing more were offered.

Now the evidence that will be offered as to the fabricating field will involve a number of wholly owned subsidiaries of the U. S. Steel which are not defendants in the case. The fabricating products of U. S. Steel in five of these eleven states are sold by the defendant Columbia, but, Columbia is not itself a producer of fabricated products. It acts as a selling agent for other U. S. Steel subsidiaries in this Consolidated market area. The principal fabricating subsidiaries of the U. S. Steel Corporation that are involved whose products are sold in that area either by Columbia or directly by themselves are the American Bridge Company and the Virginia Bridge Company, both of which have fabricating plants located in the East and Middle West, but which make extensive sales in this Western market area. They 224—6 are, by the way, fabricators of what are known as structural steel products.

In addition to those subsidiaries the National Tube Company and Oil Well Supply Company and U. S. Steel Products Company are their other wholly owned subsidiaries which sell in this market products of the same general class as those produced and distributed by Consolidated and its subsidiaries, and we shall therefore offer proof as to the business of those companies in the market also.

224—7 Now, the defendants suggest that the pretrial conference between U. S. Steel and Consolidated in selling fabricated products was negligible because U. S. Steel's so-called structural fabricating subsidiaries—that is, Virginia Bridge and American Bridge—fabricate different kinds of structural than Consolidated had. I think you will find that the defendants gen-

erally employ the word "fabricated" in a rather technical sense, whereas, it is used in the complaint literally. Thus they, in their interrogatory answer don't regard the manufacture of steel ships as fabricating steel products. Nor apparently do they regard the manufacture of steel pipe as fabrication. We are not concerned here with the question of whether or not manufacture of such ships and pipes is technically regarded as steel fabrication or not.

We propose to show that Consolidated and U. S. Steel have both made extensive sales of these products in the Consolidated market as well as structural steel products, and in our view, the extent of the defendants' competition must be measured by their entire activity in this market here rather than by looking at any particular one line of products in which one or the other might specialize.

This limited competition on which the defendants rely is obviously quite different from the one on which we rely.

The Sherman Act, in our view, does not compel any 224-8 two business organizations which are rendering similar service or selling similar products to compete with each other in all lines, in all markets or in any market. The primary purpose of the Act is to make sure that the maximum opportunities for competition among such are preserved in all markets. We believe the Sherman Act proposes from the measure of the substance between U. S. Steel and Consolidated, must be their over-all performance in selling similar products in the same market rather than simply looking at their performance in the structural field alone or their performance in selling any particular type of structure.

We think the evidence will show that the amount of steel-fabricating facilities that are devoted to any one class of business varies greatly from month to month and from year to year in accordance with unforeseeable demand factors. As during the war both Consolidated and U. S. Steel expanded their shipbuilding facilities enormously. Each of them built more than a billion dollars' worth of steel ships for the United States Government although normally those activities would be a small part of their business.

As we read the decisions of the Supreme Court, the Sherman Act is primarily concerned with the nature and extent of the economic power that defendants possess rather than details of its use.

Our proof is designed to show that over a substantial 224-9 period of time these companies have demonstrated an ability to sell fabricated steel products in this market for the same general class, and that they both handled a very substantial volume of business in those products in that market.

Now, we believe that a consideration of the applicable Supreme Court decisions will satisfy your Honor that this competition is no less substantial merely because the Steel Corporation has seen fit to devote a greater part of its efforts and capacity to a particular type of fabricating business than Consolidated runs.

Our proof, I think, will show that U. S. Steel starts with a competitive advantage over all independent fabricators, such as Consolidated, simply by virtue of U. S. Steel's widely integrated operations. U. S. Steel's fabricating subsidiaries, American Bridge and Virginia Bridge, are only two of a great many wholly owned subsidiaries of the corporation which are engaged in various branches of the mining, transportation, and steel manufacturing industries. These affiliated corporations are so extensive that other subsidiaries of U. S. Steel are themselves a substantial market for the products of its manufacturing subsidiaries. There are still other subsidiaries which represent the supply of rolled steel products for the manufacturing subsidiaries. They thus operate at all times with an assured supply of raw material and an assured outlet for a substantial part of the products  
224—10 that they make, both raw materials, semifinished and finished products.

Whether or not they choose to engage in any particular field of fabrication obviously is determined, may be determined, by somewhat different factors from those that control a similar position of an independent steel manufacturer or fabricator. The profit margin on a particular type of business may not be decisive. U. S. Steel, if it was to take a fabricating contract at a loss merely to operate a rolling mill at a profit, may well do so; or it may sacrifice profits on the sale of rolled steel to a fabricating subsidiary in order to make a low bid on some fabricating business without sacrificing a fabricating profit.

U. S. Steel's integrated organization, thus in itself, gives them a competitive flexibility that is not possessed by Consolidated or any other independent. In order to compete successfully with U. S. Steel at all, Consolidated or any other independent must render some kind of superior or specialized service.

Acquisition of Consolidated by U. S. Steel simply means the integration of Consolidated's business with that of all the other subsidiaries of U. S. Steel and the consequent elimination of Consolidated as not only an independent market for raw materials of others but as an independent source of fabricated steel products and service.

One comment about the attempt to monopolize charge  
224—11 and then I will close. That is the Section 2 violation which is alleged only as against the U. S. Steel defendants.

We don't base this claim of a Section 2 violation merely on a consideration of U. S. Steel's present position in the Consolidated market and the increase in that position which this acquisition would bring about. Our contention is, and we believe the proof will show, that this particular Act is, in any event, one step in the execution of a plan ultimately to achieve a degree of control over the fabricating position in this market which will amount to a monopoly. We don't, of course, expect to show such a plan by direct evidence, but we will offer evidence of U. S. Steel's past conduct which we believe compels the inference of such a fact as U. S. Steel's *past conduct which we believe compels the inference of such a fact as U. S. Steel's intention.*

I have nothing more to add unless there are some questions that have been raised in your Honor's mind.

The COURT. There are none.

Mr. MILLER. I would like to hand your Honor a very brief trial memorandum. We will reserve our opening until we come to our case.

Mr. WRIGHT. I will ask to have this agreement marked "Plaintiff's Exhibit 1."

Mr. MILLER. Is that the purchase and sale agreement?

Mr. WRIGHT. Yes; that is the agreement of December 224—12 14 between Consolidated and Columbia. This agreement that has been marked "Plaintiff's Exhibit 1" for identification, is not only the original agreement of December 14 but has attached to it these various amendatory agreements which were apparently executed in letter form at subsequent dates. I don't know that I have seen this last correspondence. As I understand it, Mr. Finger, this document that has been marked as "Plaintiff's Exhibit 1" for identification does now contain all of the agreements or amendments which have been made? That is a complete statement?

Mr. FINGER. That is correct, Mr. Wright.

Mr. WRIGHT. We offer in evidence Plaintiff's Exhibit 1.

(The agreement referred to was received in evidence and marked "Plaintiff's Exhibit 1.")

Mr. WRIGHT. In handling these interrogatories we are only offering parts of the answers for that reason in order to avoid mutilating the originals. I think it might be well just to agree that such parts as we offer may be copied into the record.

Mr. MILLER. You can state the particular numbers that you offer without bothering to have it written into the record.

Mr. WRIGHT. I think we should have the answers that are offered and received physically incorporated in the record.  
224—13 I propose to make the offer for that purpose. We are offering in evidence the answer to Interrogatory 4 in its

entirety. That is reasonably short: I believe I may as well read it, if that is agreeable. This is the answer of the defendant Consolidated to Interrogatory 4.

The interrogatory is:

"What is the name, address, and principal business of any corporation engaged in making or selling rolled steel products or making or selling fabricated steel products, which is owned or controlled by you?"

The answer is:

"Western Pipe & Steel Company of California, The Steel Tank and Pipe Company of California, Consolidated Steel Corporation of Texas," and contains a note saying:

"In addition to the foregoing, Consolidated Steel Corporation owns a 50% interest in Western Tank Car Company. Western Tank Car Company engages only in the repair of railroad tank cars. It does not make or sell any fabricated steel products other than repair parts."

The answer also contains the addresses of each of these companies, which I didn't read, but in each case I assume the reporter may copy the whole answer in as read. In some of these cases I will summarize to save time; that is, my statement won't necessarily be complete, but the record will show a complete statement of exactly what is there.

224-14 (Interrogatory No. 4 and the answer thereto reads as follows:)

"What is the name, address, and principal business of any corporation engaged in making or selling rolled steel products or making or selling fabricated steel products, which is owned or controlled by you?"

"ANSWER:

"Western Pipe & Steel Company of California, 5700 South Eastern Avenue, Los Angeles, California; Principal business: Steel fabricators and general contractors,

"The Steel Tank and Pipe Company of California, 1100 Fourth Street, Berkeley, California; Principal business: Steel fabricators (Principally pipe).

"Consolidated Steel Corporation of Texas, Orange, Texas, P. O. Box 341; Principal business: Steel fabricators and contractors."

"NOTE.—In addition to the foregoing, Consolidated Steel Corporation owns a 50% interest in Western Tank Car Company. Western Tank Car Company engages only in the repair of railroad tank cars. It does not make or sell any fabricated steel products other than repair parts."

Then we shall offer the Consolidated answer to Interrogatory 5, which simply describes the extent of ownership of those

224-15 subsidiaries. It states that defendant owns all of the stock and it tells when it acquired it.

(Interrogatory No. 5 and the answer read:)

"What is the nature and extent of such ownership or control and when was it acquired?"

"ANSWER:

"Consolidated Steel Corporation is the owner of all of the issued, subscribed and outstanding shares of Western Pipe & Steel Company of California, The Steel Tank and Pipe Company of California and Consolidated Steel Corporation of Texas. The stock of the first of these companies was acquired on December 21, 1945, immediately following its organization. The stock of The Steel Tank and Pipe Company of California was purchased on December 15, 1945. The stock of Consolidated Steel Corporation of Texas was acquired on or about January 22, 1940, immediately following its organization."

Then Interrogatory 6 we offer. That shows the extent to which Consolidated engaged in the business of selling rolled steel products. It contains a comparatively small amount of sales of those products.

(Interrogatory No. 6 and the answer read:)

"What is the approximate tonnage and dollar volume of rolled steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available?"

224-16 "ANSWER:

"Consolidated Steel Corporation and all of the companies named in the answer to Interrogatory 4 have never actively engaged in the business of selling rolled steel products. However, there have been a number of minor sales. The following shows the approximate tonnage and dollar volume of sales of rolled steel products by Consolidated Steel Corporation only:

	Approximate tonnage	Approximate dollar volume
Calendar year 1937	90	\$0,288
Calendar year 1938	118	9,940
Calendar year 1939	95	6,858
8 months ended 8/31/40	102	7,661
Fiscal year ended 8/31/41	2,674	151,047
Fiscal year ended 8/31/42	1,489	142,747
Fiscal year ended 8/31/43	221	19,970
Fiscal year ended 8/31/44	49	3,538
Fiscal year ended 8/31/45	21	2,080
Fiscal year ended 8/31/46	11	944
Total for entire period	5,071	354,353

<sup>1</sup> Includes sale of entire inventory of reinforcing steel stock to Soule Steel Company of 2,572 tons for a price of \$126,386, after which sale Consolidated Steel Corporation has not engaged in selling reinforcing steel.

<sup>2</sup> Includes sale to U. S. Navy of 606 tons for a price of \$65,262 for export to Pearl Harbor immediately after the Pearl Harbor bombing.

"Comparable figures for subsidiary companies of Consolidated Steel Corporation (named in answer to Interrogatory 224-17 4) are not available but the volume of such sales by these companies during the entire period is believed to be even less than the small volume of sales made by the parent company."

Then we are offering the answer of Consolidated Interrogatory 7. This is the interrogatory which asked for the approximate tonnage and dollar volume of the fabricated steel products sold by Consolidated and its subsidiaries during the years 1937 through 1946, or fiscal years most nearly approximating those years for which the figures are available.

(Interrogatory No. 7 and the answer read:)

"What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to Interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available?"

"ANSWER:

"The attached schedules show the approximate tonnage and dollar volume of sales by each of the companies named in the answer to Interrogatory 4. None of such companies had any such figures immediately available and in developing them in answer to this interrogatory and to Interrogatory 9 each company used whatever records were available in addition to estimates and approximations—particularly in connection with tonnage 224-18 figures. However, the resulting figures set forth in the attached schedules are believed to be reasonably accurate estimates of sales by sales classifications both in dollar volume and tonnage. The following explanatory remarks are to be considered in connection with figures shown for each company:

"A. CONSOLIDATED STEEL CORPORATION (CALIFORNIA)

"Prior to August 31, 1940, the corporation closed its accounts on a calendar year basis. A fiscal year of September 1 to August 31 was adopted on August 31, 1940, and thereafter the accounts were closed on August 31 each year. Prior to August 31, 1940, the corporation's accounting (with a few minor exceptions) was on the so-called 'completed contract' basis; i. e. sales were not reflected in the income accounts until the job was completed. The corporation's accounting methods were revised at August 31, 1940, and the so-called 'accrual basis' of accounting for sales was adopted, under which a portion of the sales price of jobs was taken up in sales accounts each month. Therefore, beginning with the period ended August 31, 1940, it would not have been

practicable to attempt to develop tonnage figures for sales. In order that tonnage figures might be developed on a reasonably consistent basis, sales for periods beginning January 1, 1940, were scheduled on a completed contract basis for commercial work. Since war work represented a tremendous volume 224-19 and was a type of work not normally engaged in by this corporation the sales figures for war work were not converted to a completed contract basis but are stated in accordance with amounts recorded on the company's books during each fiscal period. Except for ship repair activities total tonnage for these classes of work were spread over the separate periods in the ratio that the dollar amounts recorded during each period bear to total dollar volume. Very little steel was used in ship repairs activities and tonnage figures for steel used for such work were not developed.

#### "B. WESTERN PIPE & STEEL COMPANY OF CALIFORNIA

"Prior to December 15, 1945, Consolidated Steel Corporation had no financial interest in this company. On that date the assets of Western Pipe & Steel Company of California were acquired by Consolidated Steel Corporation and a new company of the same name was formed by Consolidated Steel Corporation to continue the business of Western Pipe & Steel Company of California (the old company). Therefore, the figures shown for sales of Western Pipe & Steel Company of California for the periods prior to December 15, 1945, are those of the predecessor (or old) company. During this period the company's accounting period was the calendar year and revenues from sales were reflected on a completed contract basis except for ship 224-20 construction and ship repair work which was included in the income accounts on the basis of recorded costs. Upon the formation of the new Western Pipe & Steel Company of California on December 15, 1945, a fiscal year ending August 31 was adopted and the company's accounting for sales was placed on the accrual basis. Therefore, sales figures for the periods prior to December 15, 1945, reflecting sales of the predecessor (or old) company are stated on a completed contract basis. For the period December 16, 1945, to August 31, 1946, the sales figures have been converted to a completed contract basis and reconciliation to the accrual basis shown on the schedule. It should be noted that during the calendar year ending December 31, 1941, the predecessor (or old) company netted against costs \$22,908,967 of shipbuilding work for security reasons during the early stages of the war. This amount has been reinstated in the attached schedules.

"C. THE STEEL TANK AND PIPE COMPANY OF CALIFORNIA

"Prior to December 15, 1945, this company was a wholly owned subsidiary of Western Pipe & Steel Company of California (predecessor (or old) company). On that date the investment of Western Pipe & Steel Company of California in The Steel Tank and Pipe Company was acquired by Consolidated Steel Corporation. The company's accounting period to December 15, 1945, was the calendar year. On the latter date a fiscal accounting year ending August 31 was adopted. All sales have been reflected in the company's books on the completed contract basis and no changes in this accounting method was made upon acquisition of the stock of the company by Consolidated Steel Corporation.

"D. CONSOLIDATED STEEL CORPORATION OF TEXAS

"This company has been on the accrual basis of accounting for sales since its inception. Also a fiscal year ending August 31 was adopted. Therefore, sales figures for this company have been converted to a completed contract basis for each of the fiscal years ending August 31 and a reconciliation made with the sales taken up on the accrual basis."

The defendants attached to it separate schedules, one for Consolidated Steel Corporation, one for Western Pipe and Steel of California, one for Steel Tank and Pipe Company of California, and one for Consolidated of Texas, with explanatory notes as to the various fiscal years employed in setting up the tables. Then the actual data itself is incorporated in mimeographed schedules there, which we are offering with the rest of the answer.

Now, those schedules are broken down by product classifications. I won't attempt to read them. I would like to give you some idea of the figures that are in them that we consider as significant.

Those schedules show that the total commercial work for the 10-year period for all these Consolidated companies amounted to \$148,000,000. The general division there as between commercial work and war work; total commercial work of about \$148,000,000, total war work of \$1,568,000,000. The principal war work was ship building and some ship repair.

Now, as to the \$148,000,000 worth of commercial work, the principal work was described there as plate fabrication. It runs to about \$33,000,000; structural about \$22,000,000; heavy pipe, about \$20,000,000; boilers \$11,000,000; small boats \$10,000,000 and miscellaneous about \$13,000,000.

The variations in that type of work ran something like this: for the parent company, Consolidated, the commercial work varied

from a high of about \$6,000,000 in 1937 to a low of about \$1,700,000 for the year ended August 31, 1945, and the last part on the tabulation shows about \$4,800,000 of that work.

In the subclassifications of the commercial work, it shows a high for structural of about \$3,000,000 in 1937, and a low of \$685,000 for the year ended August, 1945, and about \$1,280,000 for the year ended August 1946. The plate work varied from a high of \$2,300,000 to a low of \$420,000, with a low of 224-23 about \$493,000 for the last part. The heavy pipe work varied from a high of \$1,400,000 to zero, with \$25,000 for the last part tabulated.

For Western Pipe and Steel Company, the principal Consolidated subsidiary, the 10-year total for commercial work was about \$42,000,000 and the high varied from about \$10,000,000 to a low of about \$4,500,000. The variations within the classifications ran about like this: Heavy pipe, high of \$4,000,000 to a low of \$348,000; plate from a high of \$2,300,000 to a low of about \$585,000; the well casing from a high of \$826,000 to a low of about \$223,000; culvert pipe, a high of \$627,000 to a low of about \$9,000; the structural from a high of \$573,000 to a low of about \$26,000; the small plate work, a high of \$1,700,000 to a low of \$230,000; boilers from a high of over \$4,000,000 to zero; bolted tanks, a high of \$2,000,000 to \$70,000; light pipe, \$272,000 to about \$4,000; then mechanical equipment, a high of \$403,000 to \$66,000; refinery equipment, a high of \$116,000 down to \$5,000. Those are annual sales figures I was giving you.

The third subsidiary, The Steel Tank and Pipe Company, the work of that company was entirely commercial. It varied from a high of \$4,800,000 in 1944 to a low of about \$268,000 for 1938; and the volume for the last period tabulated, the eight months ending in 1946, was about \$1,500,000.

Those product classifications produced by that company were: plate, heavy pipe, light pipe, small plate 224-24 work, refinery equipment and structural.

The total for all products of the 10-year period was about \$17,000,000 for that company.

Then Consolidated Steel Corporation of Texas was a company that was organized only in 1940, so only a seven-year period is covered. The total business they did, which was all commercial for that period, was about \$10,000,000; the high being about two and a quarter million and the low about a quarter of a million. The structural high was more than a million for the eight months ending August 1946, to a low of \$162,000. That was the principal class of business done by that particular company.

Now, the next offer will be the Consolidated answer to Interrogatory 19. I will read that. That is short.

"What is the approximate total price that you contemplated ultimately receiving from Columbia Steel Company for your assets and business when the purchase agreement was made?"

Your Honor, may I state that the agreement provides for the sale price of \$8,500,000, I believe, plus certain adjustments to be made at the time of closing, and the purpose of this was to get at the best estimate as to what the ultimate price would be.

The answer is:

"Consolidated contemplated that, if the transaction 224-25 was closed on March 31, 1947, it would ultimately have received from Columbia Steel Company approximately \$10,000,000 for fixed assets. \* \* \*

Then there is a note saying,

"Plus a further amount (possibly \$200,000) to be determined by examination and count of the inventory of Western Pipe & Steel."

Mr. MILLER. I think that is very brief. I think he has put the whole answer there.

Mr. WRIGHT. Yes; the whole answer goes in.

"\* \* \* \$10,000,000 for fixed assets (\$8,293,319 plus and minus adjustments for changes subsequent to August 31, 1946) plus certain payments, the amounts of which could not be reasonably approximated at the date of the agreement, such as payment for the cost of whatever materials were on hand at the closing date and Consolidated's proportion of the sales value of whatever work was in process at the closing date, to the extent that such amount was not paid to Consolidated by its customers prior to the closing date."

Our next offer is the Consolidated answer to Interrogatory 20, which asked for the approximate tonnage in dollar volume of unfilled orders on the Consolidated books at or about the time the purchase agreement was made. That answer contains attached schedules of those orders, which I won't bother to read.

224-26 (Interrogatory No. 20 and the answer read:)

"What was the approximate tonnage and dollar volume of unfilled orders on your books at or about the time the purchase agreement was made?

"ANSWER:

"The attached schedules show the approximate tonnage and dollar volume of unfilled orders on the books of each of the companies named in the answer to Interrogatory 4 as of November 30, 1946. The figures were compiled according to product classification and reflect the total sales price and tonnage of uncompleted orders, some portion of which may have been completed and included in amounts reflected in income on the accrual basis of accounting. It is not practicable to attempt to relate steel tonnage

to dollar amounts accrued on the books of each company at November 30, 1946, and no attempt has been made to develop such figures."

The summary figures are that Consolidated of California had a total backlog of about \$15,000,000, including more than \$5,000,000 structural and about \$6,000,000 in heavy pipe. Western Pipe & Steel had a total backlog of more than \$7,000,000, including about a quarter million structural. Steel Tank & Pipe had a backlog of about \$785,000; Consolidated of Texas had a total backlog of about \$3,800,000, about two-thirds of which was structural.

The total unfilled orders of all the Consolidated 224-27 companies ran to about \$28,000,000.

Mr. ALFRED WRIGHT. May I correct your statement as to the backlog of Consolidated Steel? You failed to deduct the accrual of November 30, 1946, which reduces that by about \$6,000,000.

Mr. WRIGHT. That figure is on what page?

Mr. FINGER. 22-A, the first page following the interrogatory.

Mr. WRIGHT. That is quite right. The figure I used was the total figure there at the bottom of the column. The correct figure that should be used is the figure opposite the column Backlog November 30, 1946, which shows \$9,000,000 after deduction of an accrual of \$6,000,000.

The COURT. What figure did you use? I thought that was the figure you used.

Mr. WRIGHT. I think I said \$15,000,000. I should have said \$9,000,000 in summarizing.

The COURT. I understand.

Mr. WRIGHT. The actual figures are going into the record. The next answer we are offering is Consolidated's answer to Interrogatory 21. That is the answer to the interrogatory asking for the approximate tonnage and dollar volume of the rolled steel products bought by Consolidated and its subsidiaries for the years 1937 through 1946.

224-28 There is an attached schedule which shows the names of the suppliers with the tonnage sold to Consolidated and its other subsidiaries during each of those years. There is also a note to the effect that additional tonnage, not appearing in the schedule, amounting to about \$30,000,000 was supplied to Consolidated by the Maritime Commission. That, of course, does not appear in the attached schedules.

Those schedules show the purchase by Consolidated of about \$113,000,000 worth of railroad steel for the 10-year period. The high is more than \$22,000,000 in 1943, and the low is 1938, when about \$2,500,000 was bought. About 45% of those purchases were made from U. S. Steel subsidiaries, which are indicated there.

During the early years U.S. Steel and Bethlehem furnished about 90 percent of what Consolidated bought. In later years the independents had substantial sales with Kaiser, Inc., selling about 15% of those requirements during the last three years.

(Interrogatory No. 21 and the answer read:)

"What are the approximate tonnage and dollar volume of rolled steel products bought by you or any of the companies named in your answer to Interrogatory 4 from each supplier for each of the years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available?"

"ANSWER:

"The attached schedule shows approximate tonnage 224—29 and dollar volume of rolled steel products purchased by Consolidated Steel Corporation and the companies named in the answer to Interrogatory 4 from each supplier for each of the years 1937 through 1946. These figures are necessarily estimates but are believed to be substantially correct. There is included in the tonnage and dollar volume of steel purchased approximately 537,000 tons of steel actually purchased and paid for by the United States Maritime Commission but furnished to Consolidated Steel Corporation for the construction of ships for the Maritime Commission. The dollar value of this steel (included in the attached schedules) is estimated to be \$30,520,000. It is further estimated that this steel was received as follows:

Year	Tonnage	Amount
1942.....	108,000	\$0, 156,000
1943.....	158,000	9, 006,000
1944.....	182,000	10, 374,000
1945.....	89,000	4, 984,000
Total.....	537,000	30, 520,000

"In the limited time available it was not possible to determine the tonnage or dollar volume of such steel furnished by individual suppliers."

(Answers of Consolidated Steel Corporation to Interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 19, 20, 21 propounded by Plaintiff were received in evidence and marked "Plaintiff's 224—29½ Exhibit 2.")

Mr. WRIGHT. That concludes the offer of the material in the Consolidated interrogatory answers. At this point I will ask Mr. Kirkpatrick to take over.

#### *Argument of Mr. Kirkpatrick*

Mr. KIRKPATRICK. The next exhibit would be Columbia's answers to interrogatories. We will offer that as Plaintiff's Exhibit 3.

(Answers of Columbia Steel Company to interrogatories received in evidence and marked "Plaintiff's Exhibit 3.")

The first interrogatory is Interrogatory 6.

Mr. MILLER. Whose are you reading now?

Mr. KIRKPATRICK. This is Columbia, which calls for the approximate tonnage and dollar volume of rolled steel products sold by you and by each of the companies named in your answer to Interrogatory 4 for the years 1937 through 1946 for fiscal years.

I would like to call your Honor's attention to the reference to Interrogatory 4, which asked Columbia for the subsidiaries of Columbia engaged in making or selling rolled or fabricated steel and the answer was there were none. The only offer is of Interrogatory 6.

The answer to Interrogatory 6 gave the approximate tonnage in dollar volume of railroad steel which ranged from a high of about \$75,000,000 to a low of about \$9,500,000 in 1946, amounting to about \$26,000,000.

224—30 "Explanatory note with reference to the answers to Interrogatories Nos. 7 and 9.

"It should be understood in connection with the figures shown in the schedules appended to the answers to Interrogatories Numbers 7 and 9 that such figures include all of the work performed and therefore dollar and tonnage figures in substantial amounts reflecting services and materials other than fabricated steel products.

"Such included figures cannot be segregated within the time limited for the filing of answers to the Interrogatories."

224—31 "Interrogatory 6: What is the approximate tonnage and dollar volume of rolled steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available?"

"ANSWER:

Year	Tonnage	Dollar volume	Year	Tonnage	Dollar volume
1937	224,938	\$14,217,737	1942	925,002	\$45,946,604
1938	142,901	9,508,940	1943	844,439	42,788,691
1939	308,663	17,496,902	1944	1,587,674	75,207,862
1940	365,364	20,738,693	1945	597,737	32,368,876
1941	632,700	36,417,636	1946	423,803	25,908,748"

The next is Columbia's answer to Interrogatory 7. This calls for the approximate tonnage and dollar volume of fabricated steel products sold by Columbia for each of the years 1937 through 1946.

The answer stated that Columbia had no fabricating facilities, but it sold the fabricated steel products of American Bridge and Virginia Bridge, which are the fabricating subsidiaries of U. S. Steel, in six of the States involved.

The figures given for those sales went from a high of \$9,300,000 to a low of \$1,600,000 approximately. The entire period totals approximately \$46,000,000.

(Interrogatory 7 and the answer read:)

"What is the approximate tonnage and dollar value of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximate to said years, for which figures are available?"

"ANSWER:

This defendant has no fabricating facilities. However, it sells the fabricated steel products of American Bridge Company and Virginia Bridge Company, the fabricating subsidiaries of U. S. Steel, in the States of Arizona, California, Idaho, Nevada, Oregon and Washington. The following figures reflect approximate total sales of fabricated steel products delivered into said States and include sales made by American Bridge Company and Virginia Bridge Company, as well as by this defendant:

Year	Tonnage	Dollar volume	Year	Tonnage	Dollar volume
1937.....	16,348	\$2,009,853	1942.....	45,222	\$7,654,919
1938.....	35,331	3,212,033	1943.....	21,056	2,674,844
1939.....	19,928	2,291,506	1944.....	28,726	4,810,850
22.4-33 1940.....	48,776	6,114,425	1945.....	11,761	1,621,498
1941.....	65,775	8,385,413	1946.....	27,432	4,215,056

That is all from Columbia's answers to interrogatories.

Plaintiff's Exhibit 4 will be the answers of U. S. Steel of Delaware to interrogatories.

(Answers of United States Steel Corporation of Delaware to interrogatories was received in evidence and marked "Plaintiff's Exhibit 4.")

The first answer which the Government offers is Interrogatory 4, which called for the names of any corporations engaged in the making or selling of rolled or fabricated steel products to which U. S. Steel of Delaware rendered advice or service.

The answer listed Carnegie-Illinois, the American Steel and Wire, Tennessee Coal, Iron and Railroad Company, Columbia Steel Company, all of which make and sell, Geneva Steel, which makes but doesn't sell; U. S. Steel Supply Company, U. S. Steel

Export Company, which sells but doesn't make. Those were the companies engaged in making or selling rolled steel.

On making or selling fabricated steel products, the interrogatory answer listed American Bridge and Virginia Bridge, which both made and sold fabricated. It also listed Columbia Steel and U. S. Steel Export which sold fabricated.

The interrogatory also said that U. S. Steel of Delaware renders advice and service to Federal Shipbuilding & Dry Dock Company, which is engaged in shipbuilding.

(Interrogatory 4 and the answer read:)

"What is the name, address, and principal business of any corporation engaged in making or selling rolled steel products or making or selling fabricated steel products, to which you render advice or service?"

"ANSWER:

(a) The corporations engaged in making or selling rolled steel products to which this defendant renders advice or services are as follows:

Carnegie-Illinois Steel Corporation, 434 Fifth Avenue, Pittsburgh 30, Pennsylvania.

The American Steel and Wire Company of New Jersey, Rockefeller Building, Cleveland 13, Ohio.

Tennessee Coal, Iron and Railroad Company, Brown-Marx Building, Birmingham 2, Alabama.

Columbia Steel Company, Russ Building, San Francisco 6, California.

224—35 The above corporations make and sell rolled steel products.

Geneva Steel Company, P. O. Box 269, Salt Lake City 8, Utah.

The above corporation makes but does not sell rolled steel products.

United States Steel Supply Company, 1319 Wabansia Avenue, Chicago 90, Illinois.

United States Steel Export Company, 30 Church Street, New York 8, New York.

The above corporations sell but do not make rolled steel products.

The principal business of each of the above named corporations is the manufacture and/or sale of iron and steel products.

(b) The corporations engaged in the making or selling of fabricated steel products to which this defendant renders advice or services are as follows:

American Bridge Company, Frick Building, Pittsburgh 19, Pennsylvania.

Virginia Bridge Company, P. O. Box 2201, Roanoke 9, Virginia.

The principal business of each of the above named corporations is the fabrication and sale of structural steel products.

224—36 Columbia Steel Company, Russ Building, San Francisco 6, California.

United States Steel Export Company, 30 Church Street, New York 8, N. Y.

Columbia Steel Company sells fabricated steel products of American Bridge Company and Virginia Bridge Company in foreign countries.

This defendant also renders advice and services to Federal Shipbuilding and Dry Dock Company of Kearny, New Jersey, which is engaged in shipbuilding. Shipbuilders are not regarded as a part of the steel fabricating industry and these answers include no data with respect to them. Barges, such as are built by American Bridge Company and several other steel fabricators, are regarded as fabricated steel products and these answers include data with respect to them."

224—37 The next interrogatory offered is Interrogatory 7 which called for the approximate tonnage in dollar volume of fabricated steel products sold by you and by each of the companies named in Interrogatory 4, which is the one we just had. The answer listed the total sales of the American Bridge and Virginia Bridge companies. The American Bridge figures run from a high of \$53,800,000 to a low of \$27,300,000. The figures for Virginia Bridge run from \$16,500,000 down to \$6,100,000.

The answer to the interrogatory also said that American Bridge Company during this period built ships for the United States Government, a shipyard and ships for approximately \$183,000,000, which figure is not included in the tabulation.

"Interrogatory 7: What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years for which figures are available?

"ANSWER:

Year :	American Bridge Co.		Virginia Bridge Co.	
	Tonnage	Dollar volume	Tonnage	Dollar volume
1937	272,584	\$27,846,635	57,663	\$6,989,011
1938	297,527	\$6,578,175	62,882	\$,190,396
1939	296,779	\$9,371,823	63,427	\$,563,593
1940	301,104	\$1,451,167	90,398	\$,396,815
1941	371,824	\$2,115,096	95,916	\$1,117,933
224—38 1942	404,632	\$2,871,733	103,797	\$2,417,590
1943	203,615	\$3,683,383	90,397	\$2,982,299
1944	217,396	\$5,490,721	115,845	\$6,987,726
1945	165,552	\$2,022,273	68,643	\$,973,093
1946	167,679	\$7,362,064	68,890	\$6,386,306

"NOTES.—The above figures show the entire tonnage and dollar volume of each sales contract in the year in which each such sales contract was completed. The tonnage and dollar volume of fabricated steel products sold by such companies are not available by the years in which the sales contracts were actually made.

"The above figures include sales made of the fabricated steel products of the American Bridge Company and Virginia Bridge Company by Columbia Steel Company and United States Steel Export Company.

"The above figures also include tonnage and dollar volume of materials furnished and dollar volume of services rendered; figures showing tonnage and dollar volume of fabricated steel products only sold during said years are not presently available and could not be developed within the time given for the answering of these interrogatories.

"Fabricated steel products, materials and services furnished to other subsidiaries of U. S. Steel, excepting Columbia Steel Company and United States Steel Export Company, are not included.

224—39 "During the years above mentioned, American Bridge Company ~~employed~~ a shipyard and built ships for the U. S. Government and received for such ships during the years 1942 through 1945 approximately \$183,000,000. This latter amount is not included in the above tabulation."

The next interrogatory offered is Interrogatory 8. This called for a tonnage in dollar volume of rolled steel sold by the subsidiaries of U. S. Steel named in Interrogatory No. 4 for each of the years 1937 through 1946 for the eleven states. There are five pages of tables in the answer to that giving a breakdown by states by year for each of the five companies named: Carnegie-Illinois, American Steel & Wire, Tennessee Coal, Iron and Railroad, Columbia, and United States Steel Supply Company.

"Interrogatory 8: What is the approximate tonnage and dollar volume of rolled steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available in each of the following states: (a) Arizona; (b) California; (c) Idaho; (d) Louisiana; (e) Montana; (f) Nebraska; (g) New Mexico; (h) Oregon; (i) Texas; (j) Utah; (k) Washington.

"ANSWER: See the following pages.

224—40 "United States Steel Export Company has sold no rolled steel products in any of the states above named.

Rolled steel products produced by Geneva Steel Company are sold in the states above mentioned by the subsidiaries of U. S. Steel whose names appear at the top of the next five pages."

(The five pages of tables above referred to will be incorporated in the record at the end of this day's court session.)

The next interrogatory is Interrogatory 9, which called for the tonnage in dollar volume of fabricated steel products sold by the subsidiaries of U. S. Steel listed previously for each of the years 1937 through 1946.

The answer is a two-page table giving the sales by states and by years for American Bridge Company and Virginia Bridge Company. The sales by American Bridge Company were principally in California and Washington, the totals for the eleven-state area which this covers. The totals for American Bridge run from a high of \$19,300,000 to a low of about \$1,400,000. The sales of Virginia Bridge were primarily Texas and Louisiana out of these eleven states, and the total for all the eleven states varied from a high of about \$2,000,000 to a low of \$300,000.

"Interrogatory 9: What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 224-41 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available in each of the states listed in interrogatory 8?

"ANSWER: See the following pages.

"The tonnage and dollar volume figures set forth on the following pages include sales made by Columbia Steel Company of the fabricated steel products of American Bridge Company and Virginia Bridge Company.

"These figures reflect the tonnage and dollar value of fabricated steel products sold during each of said years for delivery within the designated state. Figures are not available showing the tonnage and dollar value of sales according to the state within which the sales contract was made."

(The two-page table of the Answer above referred to will be incorporated in the record at the end of this day's court session.)

The next interrogatory—I guess this will have to have a different exhibit number. It is the supplemental answer to Interrogatory No. 7 of U. S. Steel of Delaware.

(The Supplemental Answer to Interrogatory No. 7 of U. S. Steel of Delaware was received in evidence and marked "Plaintiff's Exhibit No. 5.")

Mr. KIRKPATRICK. Exhibit 5 is supplemental answers of United States Steel Corporation of Delaware. This is a 224-42 supplemental answer to Interrogatory 7, which shows first—

The COURT. Will it be necessary for me to look at this? I don't find it.

Mr. KIRKPATRICK. You may have the original, your Honor.

The COURT. All right. It is the United States Steel Corporation of Delaware?

Mr. KIRKPATRICK. Yes. I have a copy which I can use if your Honor cares to use the original.

The COURT. Thank you.

Mr. KIRKPATRICK. The only part of the supplemental answers which the Government offers is Interrogatory 7 and the supplemental answer to that interrogatory. That called for the approximate tonnage in dollar volume of fabricated steel products. The supplemental answer lists in the first part the Federal Shipbuilding & Drydock Company, giving the year, tons and dollar volume, and indicates over a billion dollars worth of ships built during the war.

The second part of that supplemental answer indicates the fabricated products sold by American Bridge and Virginia Bridge to other subsidiaries of U. S. Steel aside from Columbia and U. S. Steel Export. Those figures were not included in the original tabulation in the original answer to Interrogatory 7.

(Interrogatory 7 and the Supplemental Answer read:)

224-43 "Interrogatory 7: What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years for which figures are available?

"Supplemental answer:

(a) Federal Shipbuilding & Dry Dock Co.

Year	Light displacement weight of ships in net tons	Dollar volume	Year	Light displacement weight of ships in net tons	Dollar volume
1937	15, 173	\$10, 030, 081	1942	126, 988	\$295, 035, 030
1938	16, 306	14, 940, 696	1943	207, 815	290, 227, 091
1939	46, 694	35, 843, 632	1944	210, 135	256, 417, 702
1940	66, 200	38, 021, 412	1945	128, 211	163, 676, 678
1941	73, 718	60, 630, 566	1946	64, 948	113, 664, 969

"The above sales are shown for the year during which the contract work was completed.

(b) Fabricated steel products, materials and services furnished by American Bridge Company and Virginia Bridge Company to other subsidiaries of United States Steel, exclusive of Columbia Steel Company and U. S. Steel Export Company, are as follows:

224-44	Years	American Bridge Co.		Virginia Bridge Co.	
		Tonnage	Dollar volume	Tonnage	Dollar volume
1937		599	457,092		
1938		1,586	130,214		
1939		9,743	3,474,063		
1940		12,724	2,402,001	3,562	271,493
1941		15,245	5,816,404	12,215	770,172
1942		11,912	7,679,919	696	1,094,846
1943		13,300	9,390,703	3,847	771,728
1944		24,105	9,798,132	1,827	1,382,713
1945		10,426	9,391,935	454	477,847
1946		9,874	6,937,575	128	98,305
					131,731

"The foregoing figures also include tonnage and dollar volume of materials furnished and dollar volume of services rendered. The tonnage and dollar volume of fabricated steel products only furnished during said years are not presently available."

Mr. KIRKPATRICK. The next is the answers of United States Steel. That will be Exhibit 6, the answers of United States Steel Corporation to interrogatories, and the Government offers Interrogatory 3.

The Court. I am not quite certain that I follow you here. This is the supplemental answer?

Mr. KIRKPATRICK. No, sir; this is not supplemental. This is the original.

The Court. I see.

(The Answers of United States Steel Corporation to Interrogatory 3 was received in evidence and marked "Plaintiff's Exhibit No. 6.")

224-45 Mr. KIRKPATRICK. Interrogatory 3 reads, "What is the nature and extent of such ownership and control and when was it acquired?"

The reference is to the preceding Interrogatory No. 2 which asked for the name, address, and principal business of each corporation engaged in making or selling rolled steel products or making or selling fabricated steel products, which is owned or controlled by you?

The answer to Interrogatory 2 is not offered since it is practically substantially the same as the answer to Interrogatory 4 of U. S. Steel of Delaware.

The answer to Interrogatory 2 is not offered since it is practically the corporations which are subsidiaries and the dates of the acquisition. It lists Carnegie-Illinois, American Steel and Wire, Tennessee Coal, Iron and Railroad, Columbia Steel, Geneva Steel, U. S. Steel Supply, U. S. Steel Export, American Bridge, and Virginia Bridge.

(Interrogatory 3 and the Answer read:)

"Interrogatory 3: What is the nature and extent of such ownership and control and when was it acquired?"

"Answer: (a) Carnegie-Illinois Steel Corporation, all of whose stock is owned by this defendant, is a successor corporation to certain corporations engaged in business related to the production and sale of iron and steel products, all of which were acquired upon the formation of this defendant in 1901 or shortly thereafter.

224-46 "(b) The American Steel and Wire Company of New Jersey, all of whose stock is owned by this defendant, was acquired upon the formation of this defendant in 1901.

"(c) Tennessee Coal, Iron and Railroad Company (Alabama), all of whose stock is owned by this defendant, is a successor to Tennessee Coal, Iron and Railroad Company (Tennessee) and Fairfield Steel Company, its subsidiary. Tennessee Coal, Iron and Railroad Company (Tennessee) was acquired by this defendant in 1907.

"(d) Columbia Steel Company, all of whose stock is owned by this defendant, was acquired at the time of its organization in 1930.

"(e) Geneva Steel Company, all of whose stock is owned by this defendant, was acquired by this defendant at the time of its organization in 1943.

"(f) United States Steel Supply Company, all of whose stock is owned by this defendant, was acquired at the time of its organization in 1910. The Corporation bore the name of Illinois Steel Warehouse Company at the time of its acquisition by this defendant.

"(g) United States Steel Export Company, all of whose stock is owned by this defendant, was acquired upon the formation of this defendant in 1901. The corporation bore the name of Empire Rail Company at the time of its acquisition by this defendant.

224-47 "(h) American Bridge Company, all of whose stock is owned by this defendant, was acquired upon the formation of this defendant in 1901.

"(i) Virginia Bridge Company, all of whose stock is owned by this defendant, was acquired upon the formation of this defendant in 1901. The corporation bore the name of New Jersey Steel and Iron Company at the time of its acquisition by this defendant."

Mr. KIRKPATRICK. That completes the offer from that interrogatory.

*Argument of Mr. Wright*

Mr. WRIGHT. I think you have there the plaintiff's notice to admit facts that was served on the defendants in the original and their answers. We do not propose to offer all of our notice or all

of the answer. I think it would be advisable to pursue the same practice we have been doing with the interrogatories and simply mark the notice with an exhibit number and then read into the record the parts that we offer.

We will offer our request for admissions of facts with the date of May 12, 1947, with proof of service on defendant as Exhibit 7.

(Request for Admission of Facts with the date of May 12, 1947, was received in evidence and marked "Plaintiff's Exhibit No. 7.")

Mr. WRIGHT. I am offering first our request No. 6 which reads as follows:

224-48 "The defendant United States Steel Corporation made the following written statement to the Department of Justice in response to a questionnaire submitted by the Department in connection with its review of the legality of this acquisition prior to the filing of this suit:

"The question is asked as to why United States Steel could not compete with other steel producers in the sale of steel to Consolidated. Consolidated has in the past purchased a considerable tonnage of steel from subsidiary companies of United States Steel, and it is believed; that United States Steel could continue to compete for the business of Consolidated so long as such business is available. There would, however, be no assurance that such business would be obtained by United States Steel and such assurance is the objective of the proposed acquisition."

I will ask to have marked as the next exhibit number the joint answer of the defendants Columbia, U. S. Steel, and U. S. Steel of Delaware.

(The Statement of Columbia Steel Company, United States Steel Corporation, and United States Steel Corporation of Delaware in response to Plaintiff's Request for Admission of Facts was received in evidence and marked "Plaintiff's Exhibit No. 8.")

Mr. WRIGHT. I will read the part of it that I am 224-49 offering:

"Paragraph 6: These defendants admit that the defendant Columbia Steel Company, in response to the following quoted question submitted by the Department of Justice in connection with its review of the legality of this acquisition prior to the filing of this suit, made the following written answer on January 29, 1947":

Then they quote two questions. All that we are offering is the second question in the answer:

"Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

The answer to that question which is in the last paragraph, which is in the same form as was stated in our notice to admit, the question is asked as to Why United States Steel could not compete

with other steel producers in the sale of Steel to Consolidated? And the answer is, "Consolidated has in the past purchased a considerable tonnage of steel from subsidiary companies of United States Steel and, it is believed, that United States Steel could continue to compete for the business of Consolidated so long as such business is available. There would, however, be no assurance that such business would be obtained by United States Steel and such assurance is the objective of the proposed acquisition."

Mr. MILLER. Of course, the whole answer, I take it, is before your Honor. He is reading part of it.

224—50 The COURT. Tell me, Mr. Wright, again where those parts are. I followed on the statement in response to a request for your admission of facts.

Mr. WRIGHT. Yes.

The COURT. I got a little lost on your answer, because I had the joint answer of Columbia Steel and United States Steel.

Mr. WRIGHT. Paragraph 6.

The COURT. Paragraph 6 is a very short one, only eight or ten lines in it.

Mr. WRIGHT. Do you have there paragraph 6 in front of you, your Honor?

The COURT. Yes.

Mr. MILLER. You are reading sentences out of the whole admission that we made; is that it?

Mr. WRIGHT. That is all that I am offering.

You will notice, your Honor, that in our question our notice was confined to the statement given in answer to the question "Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

Now, in answering they chose to incorporate in their answer another question that had been asked at the same time, and the information they supplied in answer to that question contains a good deal of self-serving material. Now, this additional

224—51 data that they incorporated in their answer is not necessary to explain or make understandable the answer to the other question, and so far as we are concerned it would be improper for your Honor to receive that part of the answer if offered by them—that is, if they want to get those self-serving facts into the record here before your Honor I think they must put a witness on who is subject to cross-examination. That is the purpose of limiting our offer simply to the part of the answer which was responsive to our notice.

Mr. MILLER. We have no objection to counsel offering as much as he wants, but here is an answer to their question, and having offered a part, of course the balance is plainly admissible—not only under the rule, but to show what the context is, and we offer

the whole answer. The part that counsel has not read is offered so that your Honor can evaluate it.

The COURT. Possibly I might better consider that at this time. Of course, you must wait for your offer at the time when you are in a position to offer.

Mr. MILLER. I thought it was proper. This is in the nature of cross-examination. I am quite ready to reserve it.

The COURT. The only question is Do you want to concede the admissibility of part when I understand that the admissibility of the remainder is going to be questioned?

Mr. MILLER. I don't want to be technical, but if 224—52 counsel takes that position I do object to the admission of the part without the context.

The COURT. The difficulty I am in, Mr. Wright, is how am I going to solve the admissibility of part without the other?

Mr. WRIGHT. I think counsel has misspoken what is before you when he says "part." There are two questions and there are two answers. We offered in evidence one question and answer. Now, I take it we are perfectly at liberty to do that without automatically making admissible all of the material that they supplied at this time. There were a whole series of questions asked of these people. I don't suppose the mere fact that we offer the answer to one question makes the answer to another admissible.

The COURT. If it is clearly divisible, as you suggest.

Mr. WRIGHT. Yes. That, I think, is the question.

The COURT. Your statement is, "The defendant, United States Steel Corporation, made the following written statement to the Department of Justice in response to the questionnaire submitted by the Department of Justice." What fact do you ask to be admitted?

Mr. WRIGHT. The statement that they said this, which is the last paragraph of paragraph 6 of their answer:

"The question is asked as to why United States Steel could not compete with other steel producers in the sale of 224—53 steel to Consolidated." And then the answer follows.

We say that paragraph is complete in itself. It does not require the addition of any of the other material which was given in answer to another question.

The COURT. Mr. Wright, wouldn't it make material and admissible any part of the questionnaire that was interrelated? That is, if you submit a general questionnaire and ask them to admit that one question was answered, certainly isn't it going to make other questions on the questionnaire that are related to that one admissible?

Mr. WRIGHT. I would not think so, your Honor, only to the extent that the question was incomplete or could not be understood

by itself. If the context of the answers as a whole was such that you could not understand one without reading the other, then clearly you could not pick out one and offer it; but I suppose to the extent that we find anywhere an admission which is complete in itself and does not require other data to explain it we are entitled to offer that admission in evidence and have it received without at the same time having them receive the benefit of such self-serving material as they may have supplied with respect to the same subject matter at the same time or at some other time.

The theory on which this becomes admissible at all as evidence, as I understand it, is only the proposition that this is an admission against interest. Now, I don't think that 224—54 merely because an admission goes in all relevant statements made when the admission was made go in along with it. As I understand the law, the only thing that goes in with it which might have been made at the same time would be such statements as were necessarily connected with this so that you could not understand the admission which was offered or it would not make sense unless you had the other data offered along with it.

The COURT. Possibly I did not express myself clearly. I did not mean it was necessarily admissible. I said if it were related to it at least it would be very questionable as to how you would exclude the balance if it were related to this question.

Mr. WRIGHT. On the face of the answer and the question there is no relation between the two other than the fact that they were questions asked of the same person at the same time. Those are two independent questions, as I see it.

The COURT. May I look at No. 6 just a moment; because I had not found it when you read it.

Mr. WRIGHT. Surely, your Honor.

The COURT. As I understand, the fifteenth question on the questionnaire submitted by the Department of Justice to Columbia had just the question, "Why is it considered that this acquisition is the natural consequence of the sale of the Geneva Steel Plant to United States Steel?"

Mr. WRIGHT. That is one question.

224—55 The COURT. Second, "Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

Mr. WRIGHT. That is another question.

The COURT. There are two questions?

Mr. WRIGHT. Yes.

The COURT. In answer to those two questions they filed a statement which is found on page 2 of this paper.

Mr. WRIGHT. Yes, and if you will read their answer it is plain that the first four paragraphs of that answer are in answer to

the first question. The last paragraph is in answer to the second question, which answer is complete in itself; and the second one was the only one as to which required them in our notice to admit.

Mr. MILLER. I suggest that while he has got two interrogation points in his question, he has asked one question.

The COURT. "Why is it considered that this acquisition is the natural consequence of the sale of the Geneva plant to United States Steel? Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?" in spite of the sale of Geneva? That last statement I made was not in the record.

Mr. WRIGHT. In answer to the first question he says this, among other things, that the reason this is an answer to "Why is it considered that this acquisition is the natural consequence of the sale of the Geneva Steel Plant to United States Steel?"—one reason he gives there is United States Steel requires these or similar facilities to compete successfully in the fabricated structural shape and plate market in the Western States." That, of course, is really a statement of a conclusion that we are not prepared to concede and that he could not back up, as we see it, by testimony from the stand. Now, there is no reason that I can see for admitting self-serving declarations of that character simply because we seek to use the admission in the last paragraph which is in response to the second question that was asked there.

I think it largely depends, your Honor, on a careful reading of the answer. If your Honor hasn't read the answer as a whole I think you ought to do that first.

The COURT. Frankly, I had not, but I just looked at that very first paragraph of the answer. "Furthermore, United States Steel requires these or similar facilities to compete successfully in the fabricated structural shape and plate market in the Western States."

To which of the two questions embraced in 15 do you consider that an answer?

Mr. WRIGHT. Clearly to the first. That has nothing to do with the question "Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

224—57 You see, they relate to two different kinds of competition there.

The COURT. I am afraid I don't follow you on that last. The second question was "Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

Mr. WRIGHT. Yes.

The COURT. Their answer is, "United States Steel requires these

or similar facilities to compete successfully in the fabricated structural shape and plate market in the Western States." Has that no significance to that question?

Mr. WRIGHT. Well, as the answer is set up it is not given by them as the answer to that question. You will notice that the last paragraph is repeated by the statement "The question is asked as to why United States Steel could not compete with other steel producers in the sale of steel to Consolidated." Then follows the answer to that question. As they themselves have set it up they have treated them as two distinct questions.

The COURT. Do I understand that you think all up to the end has no relation? That they intend it not to have any relation?

Mr. WRIGHT. Well, on its face the first four paragraphs are given in answer to the first question, and the last paragraph on its face is given as an answer to the last question, and I 224—58 say, I think we are entitled to have the benefit of the answer to the last question in the form in which they set it up in the form in which we ask for it without at the same time offering these self-serving statements that are given in answer to the other question.

The COURT. Well, Mr. Wright, we will take a five-minute recess at this time.

(At this point a brief recess was taken.)

224—59 Mr. MILLER. Perhaps it may help out Mr. Wright if

I simply say this: We consider this one question with two related parts, question mark after each, to be sure. We intended our answer, our whole answer, to be an answer to the whole question.

Now, we aren't going to try this lawsuit on technicalities. We shall not claim that Mr. Wright is precluded by anything we said in answer to his question simply because he offers it in evidence. All we want is to have our whole answer before your Honor. That is all. We shall not contend that Mr. Wright is precluded because he reads an answer, if that is what he is afraid of.

Mr. WRIGHT. If the Court please, I see no connection under the statement for including that part of the answer which we don't offer in the record at all. It is not supposed to be of some advantage to him or to be some burden on us. I see no point why it should go in.

The COURT. Isn't it true, Mr. Wright, that the Department of Justice considered the matter so related that they embraced it in one question, No. 15, on the questionnaire?

Mr. WRIGHT. Yes.

The COURT. Evidently they didn't consider it so disconnected as to constitute two entirely separable and distinct matters.

Mr. WRIGHT. I think whether you put two questions

224—60 in one numbered paragraph, or whether you put them in—I don't think the question would be any different if you had one of those numbered 15 and the other 16. I suppose the test really goes to the substance and the nature of the questions themselves and the way in which they are answered rather than the form of numbering.

The COURT. The difficulty is this: that you, now asking me to take the last paragraph of, we will say, six paragraphs. To me it has some similarity to a question such as, if it was an automobile accident where you are driving on the wrong side of the road and the question is asked, "Did you have an accident?" and the answer is, "Yes, but the other man came on my side of the road," I don't know whether I would admit the "Yes" part without the explanation. If these two questions are connected at all, of course, I am going to admit yours as is, if you insist on it, but I can indicate to you that at the proper time I will admit the other part for what it may be worth as the complete answer to the complete question.

Mr. WRIGHT. The proper procedure in that case, I take it, is that what we have offered is admitted and there is no ruling on the rest because at this time there is no offer, but your Honor is indicating to us that you will, when it is offered, admit it over our objection?

The COURT. I am frank to say that insofar as I have 224—61 a volition in the matter, an option, I think the orderly method would be to admit it altogether and you showing at this time that you have objection to the admission of the offer.

Mr. WRIGHT. We would have no objection if the Government makes the offer. At this time I will state the objection and you can rule on our offer or his together.

Mr. MILLER. If it will break this knot, I will offer it, your Honor.

Mr. WRIGHT. You are offering the first four paragraphs?

Mr. MILLER. All that you don't offer.

Mr. WRIGHT. We object to the offer of the data contained in those four paragraphs because of its self-serving character and the fact that it is unnecessary of an understanding of the part that we offered, and it deprives us of the right to cross-examine a witness on that matter.

If these defendants want to show, your Honor, or want to offer that, your Honor, to the effect as this statement they are now offering says, that they had to require them to make this proposition compete successfully in the market, it seems to me the proper way to do that is to call a witness who will state the facts which lead him to that conclusion, and then we have a chance to cross-examine him and develop those facts. But in per-

224—62 mitting them to have a statement of that kind in the record without any foundation whatsoever, any opportunity of cross-examination, it seems to me to be highly prejudicial. That is the basis of our objection to his offer of those paragraphs.

The COURT. As I understand the rule as to these admissions of fact, it doesn't quite cover this question. But you have asked him to admit a portion of a statement they made to the Department of Justice in answer to a questionnaire, and they have. In answer to your question they have given the full statement that they made to the questionnaire.

Mr. WRIGHT. No, the questionnaire consists of many parts.

The COURT. I mean the full answer to question 15 of that questionnaire.

Mr. WRIGHT. We say the two questions which were numbered 15, yes.

The COURT. I just wanted to keep my record straight, that is the only thing. You have offered that portion to which your specific attention was drawn, and they have at this time offered the remaining part, to which you have objected. I overrule the objection.

Mr. WRIGHT. Now, the next offer relates to our request No. 8. Our request No. 8 is contained in Exhibit 7. By the way, we are only offering those parts of Exhibit 7 which I am reading. One of them was Paragraph 6, and now I am 224—63 offering Paragraph 8, which states:

"The defendant Columbia Steel Company was organized by the defendant United States Steel Corporation to operate plants at Ironton, Utah, Pittsburgh, Los Angeles, and San Francisco, California, which were acquired by the defendant United States Steel Corporation in 1930."

Then I should like to read Paragraph 8 of the joint answer, which is Exhibit 8, in which the Steel defendants—that was Columbia Steel Company, U. S. Steel and U. S. Steel of Delaware there—

"These defendants admit that the Columbia Steel Company was organized by the United States Steel Corporation to operate plants at Ironton, Utah, Pittsburg (near San Francisco), California, and Torrance (near Los Angeles), California, which were acquired by the United States Steel Corporation in 1930."

Then I will read Paragraph 9 of our notice to admit, which says:

"Prior to their acquisition by United States Steel Corporation, set plants were operated by Columbia Steel Corporation."

The answer says, "These defendants admit that prior to their acquisition by Columbia Steel Company, said plants were operated by Columbia Steel Corporation."

Then I will read our Paragraph 10, which states:

224—64 “Columbia Steel Corporation was an independent producer of steel which prior to said acquisition sold rolled steel products in competition with subsidiaries of United States Steel Corporation.”

Paragraph 10, their answer, which states:

“These defendants admit that Columbia Steel Corporation was an independent producer of steel which prior to said acquisition sold some types of rolled steel products in competition with subsidiaries of United States Steel Corporation.”

Then I will read our No. 11, which states:

“In 1939, the defendant United States Steel Corporation acquired the steel manufacturing plants operated by Boyle Manufacturing Company at Alameda and Los Angeles, California.”

Their paragraph 11, which states:

“These defendants admit that in 1939 Boyle Manufacturing Company, a Delaware corporation and a subsidiary of United States Steel Corporation, acquired the manufacturing plants which had been operated by Boyle Manufacturing Company, a California corporation, at Alameda and Los Angeles, California.”

Our No. 12 is as follows:

“These plants are now operated by United States Steel Products Company.”

224—65 Their answer to No. 12 is:

“These defendants admit that these plants are now operated by United States Steel Products Company, formerly Boyle Manufacturing Company, the Delaware corporation referred to above.”

Our No. 13 is as follows:

“United States Steel Products Company is a wholly owned subsidiary of United States Steel Corporation.”

Their answer to No. 13 is:

“These defendants admit that United States Steel Products Company is a wholly owned subsidiary of United States Steel Corporation.”

Our No. 14 is as follows:

“These plants were then and are now principally engaged in making and selling steel drums, storage tanks, pails, and small tools.”

Their answer 14 is:

“These defendants admit that these plants were then and are now principally engaged in making and selling steel shipping containers consisting of drums and pails, and also make and sell a small quantity of light-type storage tanks and a line of garden tools consisting of rakes, hoes, forks, and shovels.”

Our No. 15 is as follows:

“In 1943, United States Steel Corporation acquired the steel

224—66 manufacturing plants operated by Petroleum Iron Works at Beaumont and Port Arthur, Texas, and Sharon, Pennsylvania.”

Their No. 15 states:

“These defendants admit that in 1943 United States Steel Products Company, a subsidiary of United States Steel Corporation, acquired the manufacturing plants operated by Petroleum Iron Works at Beaumont and Port Arthur, Texas, and Sharon, Pennsylvania.”

Our No. 16 states as follows:

“Said plants are now operated as a part of the business of United States Steel Products Company.”

Their answer No. 16 reads:

“These defendants admit that the plants at Beaumont, Texas, and Sharon, Pennsylvania, are now operated as a part of the business of United States Steel Products Company, and state that the plant at Port Arthur, Texas, was destroyed by fire.”

Our No. 17 reads:

“The principal product of said plants before and after said acquisition has been the manufacture of steel drums.”

Their No. 17 reads:

“These defendants admit that the principal product manufactured at said plants before and after said acquisition 224—67 has been steel drums and pails.”

Our No. 18 states:

“Columbia Steel Corporation, Boyle Manufacturing Company, and Petroleum Iron Works all ceased to engage in the steel manufacturing business upon the acquisition of the aforesaid plants by United States Steel Corporation.”

Their 18 states:

“These defendants admit that Columbia Steel Corporation, Boyle Manufacturing Company, and Petroleum Iron Works all ceased to engage in the manufacturing business upon the acquisition of the aforesaid plants by subsidiaries of United States Steel Corporation.”

The next item that we shall offer—

Mr. MILLER. Pardon me. Is that all one exhibit?

Mr. WRIGHT. The data I read is contained in two Exhibits. Our notice to admit, I believe, is Exhibit 7, and the answer of the Steel defendants is Exhibit 8. The parts that are offered are those parts that were read.

The next item I will ask to have marked as “Exhibit 9” will be our copy of a letter to Mr. Steel, Jr., requesting certain additional data with respect to the operations of The United States Steel.

Mr. MILLER. What is the date?

Mr. WRIGHT. That letter is dated May 29.

(Letter dated May 29, 1947, was received in evidence 224—68 and marked "Plaintiff's Exhibit 9.")

Mr. WRIGHT. As Exhibit 10 and 11 I will ask to have marked the data submitted in response to the letter, Exhibit 10, as designated simply as Item 1, and is a list of the Steel Corporation subsidiaries other than those referred to in the interrogatory answers; and Exhibit 11, designated as Item 2, is certain data requested with respect to National Tube Company, Oil Well Supply Company, and United States Steel Products Company.

(Information requested by Department of Justice in letter dated May 29, 1947, Item 1, received in evidence and marked "Plaintiff's Exhibit 10." Information requested by Department of Justice in letter dated May 29, 1947, Item 2, received in evidence and marked "Plaintiff's Exhibit 11.")

Mr. MILLER. I am not sure that I know just what you are offering.

Mr. WRIGHT. First is this letter of May 29, 1947, the request. I might as well read those.

"1. A complete list of the direct or indirect subsidiaries not referred to in your interrogatory answers, with the following data as to each:

- a. Statement of the general nature of the business.
- b. Location of the principal office and physical facilities.
- c. Nature and extent of U. S. Steel's interest.

"2. In the case of National Tube Company, Oil Well Supply Company, and United States Steel Products Company we should also like to include the following data:

a. Their sales for the year 1946, with a statement of the approximate percentage of those sales which were made in the eleven states comprising the Consolidated market.

b. A description of the principal products included in said total sales and in the sales in said eleven states."

That letter is marked as "Plaintiff's Exhibit 9." Exhibit 10 is the data produced in response that, Item 1, and Exhibit 11 is the data produced in response to Item 2 that I read in the letter.

The COURT. I have the information, but I don't have in my file the request for the information, the letter of request.

Mr. WRIGHT. The request is contained in this Exhibit 9.

The COURT. I mean in the folder that I have.

Mr. WRIGHT. It was purely an informal request. I suppose that is why it wasn't filed.

Mr. MORRIS. I have it in the correspondence file. Would your Honor like at this time to have it?

The COURT. No; that is perfectly all right. I can 224—70 follow Mr. Wright very well.

Mr. WRIGHT. This Exhibit 10, your honor, which was produced in response to the first paragraph of the letter, lists the following additional subsidiaries here that weren't referred to in the interrogatories that were previously introduced.

These are: Columbia Iron Mining Company at Geneva, Utah, engaged in the mining and sale of iron ore; H. C. Frick Coke Company, Pittsburgh, mining and sale of coal; Gerrard Steel Strapping Company, Chicago, manufacturing and rental of wire tying machines and sale of wire; Michigan Limestone & Chemical Company, Rogers City, Michigan, quarrying and sale of limestone; National Tube Company, Pittsburgh, manufacture and sale of tubular products; Oil Well Supply Company, Dallas, manufacture and sale of oil country goods; Oliver Iron Mining Company, Duluth, mining and sale of iron ore; Pittsburgh Limestone Corporation, Pittsburgh, quarrying and sale of limestone; United States Coal and Coke Company, Pittsburgh, mining and sale of coal; United States Steel Products Company of New York, manufacture and sale of steel barrels, drums, light receptacle and specialties; Universal Exploration Company, Birmingham, mining and sale of zinc ore.

Then the notice appended at the bottom says:

"The foregoing comprise the operating subsidiaries of United States Steel Corporation engaged in the production  
224-71 or distribution of rolled steel products and the subsidiaries producing the raw materials going into said products, excluding the subsidiaries referred to in the answers to the interrogatories. There are, in addition, miscellaneous subsidiaries engaged in transportation and other activities shown on Schedule 1 hereto attached. United States Steel Corporation or its subsidiaries own all of the capital stock of the subsidiaries listed above and on Schedule 1 except as otherwise stated on Schedule 1."

Schedule 1 is the list of about twenty-odd corporations, most of which are transportation companies or land-holding companies.

The data reflected in Exhibit 11 is set up in this form. It gives the total sales of the National Tube Company for 1946, approximately \$144,000,000, of which about \$97,000,000 were sales to customers other than other subsidiaries of the United States Steel Corporation. In other words, about one-third of National Tube's production went to other U. S. Steel subsidiaries; and the sales to customers other than subsidiaries in the eleven states of the Consolidated market were approximately \$22,000,000 or about 23 percent of the total.

The principal products sold to customers, that is, including those which were sold through Columbia and the Oil Well Supply

Company are oil country goods, pressure tubing  
224—72 and mechanical tubing, standard pipe, line pipe, and  
miscellaneous tubular products.

224—73 This exhibit also contains the following data as to  
the Oil Well Supply Company. The total sales of  
that company for 1946 were approximately \$46,000,000, and about  
\$21,000,000 of those were in the eleven states comprising the Con-  
solidated market. Those products that were sold were: oil coun-  
try goods in the form of drill pipe, casing and tubing; line pipe  
and gathering lines for long distance transportation of petroleum  
products; wire rope for drilling and other oil field operations;  
drilling engines and machinery, feed controls, hoists, traveling  
and crown blocks—I won't repeat all of these items. It says in  
general and other specially designed equipment used in oil and  
gas fields.

Then the following data is given as to United States Steel Prod-  
ucts Company on this Exhibit 11: "Total sales for 1946 were  
\$19,000,000, of which \$10,680,000 were in the Consolidated mar-  
ket," and the principal products sold by that company in that  
market were: steel barrels, drums, light receptacles and other  
manufactured specialties.

In connection with that Oil Well Supply Company I would  
like to read a statement that appeared in the 1930 Annual Report  
respecting the acquisition. I have these reports in a bound  
volume. I don't want to tear them up.

Mr. MILLER. Whose report?

Mr. WRIGHT. The Steel Corporation's.

Mr. MILLER. Certainly, read anything you want.

224—74 Mr. WRIGHT. I would just read in the portion that  
deals with this acquisition. This is the 29th Annual Re-  
port of the United States Steel Corporation for the fiscal year  
ended December 31, 1930. This statement I am about to read  
appears on page 7 under the heading "Purchase of Oil Well Supply  
Company's Properties."

"The properties and business of the Oil Well Supply Co. (a  
Pennsylvania corporation) were acquired as of October 1, 1930.  
These were acquired free from obligations except as to current  
liabilities which were largely exceeded by current and working  
assets received in the purchase. Such acquirement furnished to  
the United States Steel Corporation an established organization  
operating throughout the United States and abroad as a medium  
for the distribution to consumers, and under the special condi-  
tions attaching to the development and operation of oil and gas  
properties, of a large quantity of steel pipe, wire rope, and other  
products of the subsidiary companies used in the oil and gas fields.  
In addition the Oil Well Supply Company handles a complete line

of equipment and machinery of its own manufacture and of the production of others, likewise sold for similar use. The Oil Well Supply Company has manufacturing plants at Oil City, Pa. (Imperial Works); Bradford, Pa.; Braddock, Pa. (Wilson-Snyder Manufacturing Company); Oswego, N. Y.; Poplar Bluff, Mo.; Tulsa, Okla.; and Los Angeles, Cal. It has also 17 general repair shops and 89 distributing stores located throughout all oil- and gas-producing fields in United States and Canada. These properties together with the net working assets of Oil Well Supply Company were acquired at the inventoried appraised value of \$19,057,930."

Then there is one other statement I would like to read from the 1936 Annual Report with respect to the—

Mr. MILLER. Annual Report of the U. S. Steel Corporation?

Mr. WRIGHT. Yes, of the corporation for 1936 with respect to the acquisition of Virginia Bridge. The interrogatory answer which refers to the acquisition of Virginia Bridge places that acquisition as 1901. That was the date on which this Virginia Bridge Corporation was acquired and then had a different name. However, the acquisition of the business formerly carried on by the Virginia Bridge & Iron Company was made in 1936, and that is the acquisition that is referred to in this report. That is the 35th Annual Report of the United States Steel Corporation for the fiscal year ended December 31, 1936. This statement I am reading from appears at the top of page 9 and is as follows:

"Early in 1936 the properties of Virginia Bridge & Iron Company, consisting of fabricating plants located at Roanoke, Virginia; Birmingham, Alabama; and Memphis, Tennessee; were acquired by Virginia Bridge Company, a wholly owned subsidiary of Tennessee Coal, Iron & Railroad Company. These plants have an annual productive capacity of approximately one hundred thousand tons of finished structural work, comprising railroad and highway bridges, office and mill buildings, hangars, pier sheds, steel railroad cars, and the field erecting equipment needed for such part of the plant output that it is necessary to erect in place."

The next item that we will offer is the petition for a review of an order of the Federal Trade Commission entered at its docket number 760, filed May 18, 1938, on behalf of United States Steel Corporation, American Bridge Company, and several other named U. S. Steel subsidiaries.

Mr. MILLER. That is objected to, your Honor, as wholly irrelevant. Counsel is offering a petition filed back in 1938 to review an order of the Federal Trade Commission made in 1924 forbidding—I will state the general effect—the sale of steel products on what was then known as "Pittsburgh plus." I take it your

Honor is not going to try that case or any basing point case. The order involved in that transaction was made nearly a quarter of a century ago. The petition for review of it was made in 1938, and that lapse of time is explained by the fact that the original order was not appealed from because it appears that the Steel Corporation said to the Federal Trade Commission that it would observe the order as far as practicable and the Federal Trade Commission which knew all about the business the way steel 224-177 was sold for all that period of time never sought to enforce this order.

In 1938 the Congress passed a statute imposing a \$5,000 penalty for every sale in violation of any order of the Commission no matter when granted, but also gave a right of review within a limited period of all prior orders no matter when entered. Well, of course, the subsidiaries of the Steel Corporation were violating the literal terms of the order and that had been known by the Commission and by everybody else for twenty years. Pittsburgh Plus had gone out of the window, and it is only a term that is occasionally referred to by historians. It has no relation to the present method of selling steel.

We were forced to take an appeal in order to save the question of penalties and to secure an interpretation or modification of the order which was so drastic that it could not possibly be complied with, and so that appeal was taken and counsel is now offering that petition and we object to it on the ground that it is wholly irrelevant to any issue here or to the acquisition of the assets of the Consolidated Steel Company.

I suggest that we should not convert this lawsuit into a trial either of Pittsburgh Plus or of the basing point question, as to which I am informed the Department of Justice or the Federal Trade Commission now has another complaint all ready to serve on us.

224-78 Mr. WRIGHT. If the Court please, there should not be any misunderstanding about the purpose for which we offer this. We do not propose to attempt to litigate here in this case the merits of the basing point system, as such, either in the form of Pittsburgh Plus or the form in which it subsequently existed or the merits of the Commission's order. We offer this petition as an admission of several things:

One, an admission of the fact that this order was made by the Commission which is set forth in full in the appendix here. In other words, that the Commission did in fact find that the Steel Corporation and its then fabricating subsidiaries had been engaged in what they regarded as a price discrimination in violation of the antitrust laws.

Mr. MILLER. I object to counsel's statement that we had done

anything that we regarded as a discrimination. We never made such a suggestion.

Mr. WRIGHT. I said that the Commission regarded. When I said "they" I was referring to the Commission, not to you.

Mr. MILLER. Then I object to that, because whatever the Commission may have regarded is not a relevant matter before this Court.

Mr. WRIGHT. That is one purpose of the offer and what the document here does. It is an admission that an order of that character was entered against the corporation and subsidiaries at that time.

224-79 The Court. Assuming that they admitted that in 1938, what has that to do as to whether or not the acquisition of Consolidated destroys competition?

Mr. WRIGHT. It is relevant in this respect, your Honor, as to the Section 1 charge, the charge that the effect of the acquisition would be to eliminate substantial competition and therefore destroy—I suppose it has no relevance to Section 1; it is not being offered under that charge. The charge which it is offered to support is the charge of an attempt to monopolize, and that is the Section 2 violation. Now, as I pointed out before, we do not expect to prove the attempt to monopolize charge simply by a comparison of what the corporation will have after the acquisition with what it had before. We only expect to prove that charge by a demonstration of the past conduct of the corporation in an attempt to show that this acquisition is only one of a series of which will ultimately result in the acquisition of a monopoly, and in proving that charge we are admittedly faced with the necessity of showing what is termed in the Sherman Act decisions a specific illegal intent.

When it comes to the Section 1 violation, that violation we think is necessarily determined by what the necessary effect of the transaction may be regardless of what the particular motives of the parties were in entering into it; but when it comes to  
224-80 this attempt to monopolize charge it is necessary and relevant for us to show that the Steel Corporation is chargeable with what is known as a specific intent.

Now, the way in which proof of that character has customarily been made in antitrust cases is, one, by showing illegal conduct in the past—that is, other antitrust violations—

The Court. Of a different nature?

Mr. WRIGHT. Well, when you say "of a different nature" I would say that any antitrust violation in connection with the sale of steel products would be relevant to the charge of attempted monopolization here, yes. Quite clearly I think the defendant's motives in making this acquisition or any other, if you are trying

to make some estimate of what the ultimate effect of permitting an acquisition of this character would be, and that is what your Section 2 charge involves, not just what the effect of the particular acquisition concerned is going to be, but Where is all this leading to? then I think the whole conduct of the corporation in relation to the antitrust laws is certainly thrown wide open and that evidence of this character has the highest probative value of anything that we could offer in support of our claim that acquisitions of this character or this acquisition when made by the Steel Corporation is a part of a general plan or attempt to monopolize.

The very discriminations that are the subject of the 224—81 order here are the kind of discriminations it was directed at. That, as I say, in antitrust violations as such, I think would clearly be admissible, but when you have violations that are directed at injuring businesses of the type that the corporation is about to acquire, it seems to me their relevance is almost beyond question; and that is why this petition, it seems to us, is clearly on this question of showing existence of the entry of the order and the nature of the practices that were engaged in and prohibited by the Commission is matter that it seems to me your Honor must consider in making any appraisal of the corporation's past conduct in the field.

The COURT. Would I, Mr. Wright, then have to go into the action on this petition?

Mr. WRIGHT. As I said, the ultimate decision of the validity of the order and the merits of that case are, of course, with the Third Circuit Court of Appeals. The case is still undecided there. Your Honor is not going to be asked to make any judgment as to whether or not what the Commission did was right or wrong. That, I take it, is the question that they answer. But your Honor is in a position to notice and I think must notice the present state of the record in that case as to U. S. Steel. As of now they stand in a position where they have not only admitted that this order finding that they had violated the antitrust laws was entered against them in 1924, but in 1938 you have the bold 224—82 statement in this petition to the effect that as to two of the paragraphs of the order they had never complied for this 14-year period.

Now, it seems to me that this petition is about as clear evidence of intention simply to wilfully defy the antitrust laws in the conduct of the corporation's operations that anyone could possibly come upon, and that of course is precisely the purpose for which we offer it. As I say, it shows not only the admission of the fact that these practices have been found and have been prohibited by the order, but an express statement—

The COURT. May I see the offer?

Mr. WRIGHT. Yes.

Mr. MILLER. May I just state to your Honor the status of that proceeding? Counsel wants to offer it to show that the Federal Trade Commission says that we have discriminated. Now, that question is now before the Circuit Court of Appeals in this Circuit. It has not been argued. I think the record has not yet been completed. It was an enormous record and the Commission is preparing it.

The precise question before the Court is whether or not this order made back in 1924 would prohibit a steel producer selling its product in competition with others from lowering its own delivered price at a particular place in order to meet the equally low price of a competitor. That is the precise question, whether 224—83 this order restrains that, and we have offered, as I think perhaps what you have gotten may show, to withdraw our appeal from that order if the Commission will stipulate that its order doesn't mean any such thing.

Mr. WRIGHT. May I interrupt you a minute, Governor? We did also intend to offer the document which contains this statement you just made, and I will ask to have that marked so that you can consider it. You should consider them both together.

Mr. MILLER. Quite right.

The Federal Trade Commission will not concede that doing what I have just said and what the Clayton Act or the Robinson-Patman Act expressly says may be done would not be a violation of this order. And so the 1938 appeal was taken. There has been an effort to compose this thing to avoid the necessity of printing this great record for the Court, but we finally got down to the point where we have got to, apparently, and got to ask the Circuit Court of Appeals to determine the question which is the supposed violation, whether this order restrains us from reducing our prices at a particular point to meet the prices there named by a competitor, and that is the question on which this claim of discrimination and violation of law is based. That question probably will be argued before the Circuit Court of Appeals some time next fall.

Now, your Honor will see how far afield you will be taken if you get into the trial of every question that can be 224—84 raised as to alleged violations of law or attempt to monopolize. This trial would produce a bigger record than we have now been struggling with in this Federal Trade Commission case, which was years in trying, and with the volume of evidence which the Commission is now struggling with in order to get it in some form to be printed. This question of monopoly in precisely the same form that is raised here was raised way back when the suit was brought by the Government to dissolve

the Steel Corporation. Precisely the same question, a question of power, size, extent. That, I assume, is not to be relitigated. The Supreme Court of the United States decided it. I assume that decision if not authority is at least binding upon the Government which was the plaintiff in this suit; and apropos of that question of size and power it appeared that the United States Steel Corporation when it was organized and back in the old days of Pittsburgh Plus now long since abandoned and forgotten except in the Department perhaps—certainly in the Federal Trade Commission and maybe in the Department of Justice in Washington—during all of that time everybody sold steel on Pittsburgh Plus and the production of the United States Steel Corporation, which was practically sixty-six percent of the production of the country when it was organized, had then shrunk when that case was decided, and the Court deemed it a very important circumstance, to forty percent, and it has now shrunk to thirty-two percent. That is how United States Steel Corporation is engaged in monopolization.

But I suggest that we will never finish this lawsuit if we are to try every allegation that can be brought forward either by the Department of Justice or the Federal Trade Commission of some alleged discrimination, attempt to monopolize, or violation of law; and this case if it is ever to be concluded or to be confined to the issue here raised by these pleadings.

The COURT. I am afraid I will have to determine it, Governor Miller, according to law rather than to threats as to the size of the record.

Will you indicate to me, Mr. Wright, before I take a recess as to what portion of that you want admitted?

Mr. WRIGHT. As to these pleadings we offer the whole thing. I don't think there is any question but what the law requires us to.

The COURT. Physically is that going to be recopied into my record?

Mr. WRIGHT. It is just an exhibit. It would be in your record as an exhibit in toto. I would like to have the other one marked too. I think they ought to be considered together in order to make this thing perfectly clear.

The COURT. The only thing I want, Mr. Wright, is something that I can see concretely to make it admissible.

Mr. WRIGHT. Yes.

224—86 The COURT. The mere fact that it involved the United States Steel Corporation doesn't make it admissible.

Mr. WRIGHT. Yes. Well, the parts that I would refer you to are the—it is a little difficult to pick parts of the pleading out, because as a pleading I suppose it should be read as a whole.

The COURT: That is the only way I can determine whether it is admissible.

Mr. WRIGHT. I think you have to read the whole document and I think you have to read the other one along with it, but I will point out to you the parts of it which I think show on their face what we are getting at.

The COURT. Well, we will take a recess at this time.

(At this point recess was taken until two-thirty o'clock p. m., the same day.)

Two-thirty o'clock p. m., the same day.

Present: As before noted.

221-87 The COURT. You have concluded on both sides as to this offer?

Mr. WRIGHT. Yes, that concludes our case, your Honor.

The COURT. As I understand, this is the last offer you have?

Mr. WRIGHT. Yes.

The COURT. Under these circumstances, reserving to the defendants a right to strike out, I will admit it at this time, subject to your showing its relevancy at a later stage. Mr. Wright, I am only interested now in my own record as to whether, in your opinion, the purpose of the admission will be perfectly clear in my record.

Mr. WRIGHT. I think so. I can make one final statement on it.

The COURT. That was the only question in my mind.

Mr. WRIGHT. Let me summarize it here, and I think that will do it.

These two exhibits when read together, I think, amount to an admission which really is confirmatory of what Governor Miller told your Honor; that is, one, the Commission did find these people guilty of price discrimination. They admitted that they violated the order and then they later admitted, in the last petition for clarification, that the order was perfectly proper

221-88 insofar as it sought to prevent them from collecting so-called phantom freight, a practice which they had engaged in all these years and which they found to be illegal so that at the present time all that is before the Circuit Court of Appeals and all that is in controversy is the question of their right to use another basing point from the point of manufacturer as the basis of quoting the price to meet competition.

The COURT. I thought involved there was the question of possible abandonment of the order.

Mr. WRIGHT. As to that I don't think we are concerned with whether or not the Commission knew they violated or whether they didn't. The fact remains, for our purposes, that there is a clear admission of violation, and at the present time there is an

admission that the order was proper insofar as it sought to prevent the collection of phantom freight.

All that is in issue now is the question of the validity of the order, insofar as it tends to prevent them from quoting a price to meet competition.

The COURT. It is admitted subject to a motion to strike.

(Petition for a review of an order of the Federal Trade Commission received in evidence and marked "Plaintiff's Exhibit 12.")

Petition for clarification of the order under review is received in evidence and marked "Plaintiff's Exhibit 13.")

Mr. WRIGHT. We rest.

Plaintiff rests.

*Argument of Mr. Miller*

Mr. MILLER. If your Honor please, I think that it may ultimately save time and I hope enable your Honor or give your Honor some aid in understanding the evidence as it is presented for me to take a little time now to outline the issues of fact and law in the case a little more clearly than has been done, the facts which we expect to establish and the position of my clients in respect of these issues.

I speak only for the United States Steel Corporation and its two wholly owned subsidiaries, the defendant Columbia Steel Company and the defendant U. S. Steel of Delaware. Mr. Finger will speak for Consolidated.

I think it must already have impressed your Honor that this is quite a remarkable antitrust suit in certain respects. The Government has closed its case. Apparently it rests it on the question of competition, and yet your Honor is now entirely in the dark and the evidence adduced sheds no light whatever to enable your Honor to determine or to know when, how or in what respect there has ever been any competition between the seller and the buyer in this case.

Plaintiff seems to rest its case on what, to me, is a rather novel view of competition. I shall have a word to say about that presently, but the fact is the controlling issues in this case, your Honor, transcend the question which has so far been attempted to be presented and will take you into a much more important field.

I think your Honor must have been impressed by the fact that the Government's case consists of information supplied by the defendants. The fact is, we have been pretty busy, even before this suit was brought and since, supplying the Department of Justice with information, and just as counsel has seen fit to read only a part of the answers to the interrogatories, even attempting to subdivide the answer to a single question put in a questionnaire

addressed to us by the Department, so it has presented to your Honor almost relatively an insignificant part of the information which has been put at the Government's disposal.

Now, counsel said that there were three issues here. There are only two; however, the plaintiff attempts to subdivide one of those issues into three parts.

The issues arise upon the allegation of the complaint that this purchase and sale contract between Consolidated and U. S. Steel will unreasonably—that is the allegation—will unreasonably restrain trade and commerce and the denial of that presents the first issue.

The other allegation is that U. S. Steel and its two  
224—91 wholly owned subsidiaries, the other defendant, are attempting by this contract to monopolize the production and sale of fabricated steel products.

Now, you have heard counsel talk about rolled steel products and fabricated steel products, and I will try to make a little plainer presently just what those two terms really mean. But you will observe first that the charge of monopoly is limited to fabricated steel products and you will also observe that by the allegation on the first issue on Section 1 of the Sherman Act the complaint accepts and adopts the well-established rule that Section 1 of the Sherman Act only forbids unreasonable restraints of trade and commerce.

Now, the test of what is an unreasonable restraint of trade and commerce established by the Supreme Court is not, as the plaintiff appears to suppose, merely the question of the amount of competition involved between the participants in the transaction attacked. That, to be sure, is one circumstance, one fact, to be taken into consideration, but the decisive and ultimate facts upon which that question turns as now firmly established are two, primarily two:

One, was the transaction engaged in for the purpose of restraining trade and commerce or for legitimate and sound business reasons?

Two, Will it be prejudicial to the public interest? and on that  
question of public interest but only as bearing on  
224—92 that question is the matter of competition involved.

Now, the plaintiff takes the position, and herein, your Honor, is the fundamental error upon which it rests its case, that this transaction will result in the elimination of what it calls substantial competition in, note, the sale. It does not say manufacture and sale. Elimination of substantial competition in the sale of rolled steel products and in the manufacture and sale of fabricated steel products; and the Government says that the

elimination of substantial competition between the parties to such an agreement as this is unreasonable and unlawful per se, just as a price-fixing agreement is unreasonable and unlawful per se. The Government thus fails to distinguish between agreements which on their face directly restrain commerce such as a price-fixing agreement and are therefore on their face as a matter of law unreasonable and unlawful, and agreements such as the one involved in this case entirely lawful upon its face—not the slightest restraint in any manner of trade and commerce directly involved—and in such case the unreasonableness of whatever indirect restraint may be involved has to be established as a matter of fact. It is not unreasonable as a matter of law.

Now, this contract here is a simple purchase and sales contract by which Consolidated undertakes to sell and U. S. Steel undertakes to purchase the fabricating business and facilities of Consolidated. There is not a word in the contract and it will 224—93 appear, if it becomes important, that there certainly is no understanding other than as expressed in the contract, there is not a word in it restraining the absolute freedom of the Consolidated, the seller, to do anything that it pleases. Now, it is quite common and would be entirely lawful in such a contract to limit the seller to the continuance of its business within a limited period of time and a limited space, but there is no such element in this case. Consolidated is free to continue in the business of fabricating steel if it chooses to do so, and may even use the purchase price for the acquisition or the construction of other facilities that take the place of those which it is selling. But is it true that for the time being at least it is incapacitating itself from going on with this business, and to that extent question may arise as to whether there is some indirect restraint of trade and commerce; and the ultimate questions of fact to be determined here on that question whether this transaction was entered into for sound business reasons and whether it will prejudice the public interest, the matter of competition being only a circumstance which your Honor will take into account in determining that question.

Now, the Sherman Act does not say anything about substantial competition or substantially lessening competition. The Clayton Act, however—and this is not a Clayton Act suit—does forbid the acquisition of the stock of one company by another the 224—94 effect of which may be substantially to lessen competition; but the courts have held, and again the Supreme Court of the United States, that the test to determine even under the Clayton Act whether there is a substantial lessening of competition is the very same test applied to determine whether a given restraint is unreasonable or undue. In other

words, the test applied under the Clayton Act just as under the Sherman Act is primarily whether the transaction was engaged in for legitimate and sound reasons and whether it will prejudice the public interest.

I have handed up a memorandum. I have attempted to make it just a brief outline of the issues of law and of fact without going into any detail for whatever assistance that may be to your Honor; and not to burden you with a multitude of authorities I have cited just those cases which I think rule this case, and if I may I would just like to say a word as to what each of those cases actually decide.

I have cited four cases; two under the Sherman Act and two under the Clayton Act, and I have also cited a rather unusual case, the DuPont case, decided in this Circuit, which is not exactly analogous because it arose under somewhat peculiar circumstances, but in which Judge Wooley has stated some very apposite observations to some of the circumstances which are like those involved in this case.

Now, the first case that I want to call your attention to 224—95 is the Union Pacific case. The Government heavily leans on that case. We stand on it also. In that case the Union Pacific was acquiring the stock of the Southern Pacific and the court found that although there was considerable competitive business between the two railroads it was small in comparison with their total business; naturally, since they were two transcontinental railroad lines. But the court also found that the competition between them which in and by itself was considerable was sharp, well-defined, and vigorous, carried on by many opposing, competing agencies, and that the merger of those agencies would directly tend to lessen the service and promptness and efficiency of it. That was a finding that that in the case of two transcontinental railroads was prejudicial to the public interest because it would impair the service rendered to shippers.

The court also found, and put considerable stress upon the fact, that that acquisition was one step—and I suppose that is where counsel gets his idea that this is one step in what he calls U. S. Steel's effort to monopolize. Well, that was a step already financed in a plan to extend the railroad empire of Mr. E. H. Harriman. It was not an illusory and unimportant act having no relation to any other. That was that decision. We rely on it as heavily as the Government because it establishes the proposition which I am contending for that the test of reasonableness is twofold: public interest and reasons for the transaction.

224—96 Now, another Sherman Act case was decided by a statutory court, a very strong court, the Socony-Vacuum case. In that case two very large oil companies formed as a result

of the dissolution of the Standard Oil Company; the Socony Company, and the Vacuum Oil Company, each with a capital of more than a half a billion dollars. Both engaged in competition in a number of states and foreign countries in many of the products that result from refining oil. They were merged. The court found as a fact that there were sound business reasons for that merger, and as a second fact that the public interest would not be prejudiced, because the competition in the fields in which those two companies competed was very intense and would continue so after the merger and that thus the public interest would be fully protected:

Now, the two cases under the Clayton Act are, first, the International Shoe case. That was decided by the Supreme Court. That arose under an order of the Federal Trade Commission. The International Shoe Company, a nation-wide concern, acquired the stock of a competing company also engaged very extensively in many parts of the country selling shoes, manufacturing and selling shoes. The two companies actually competed. You have heard the theory that if two people are engaged in a business that use a common name that they are competitive. Well, they were both shoe companies. The business in which they actually competed was in a particular type of shoe, a particular class  
 224—97 of shoe, and the business which each of them did in that class of shoe was about five percent of its total, and there was competition in the field.

Now, the Supreme Court found even on reviewing an order of the Federal Trade Commission—there was a dissent in the case, to be sure, but it was on the ground that there was evidence to sustain the finding of the Commission and that therefore the Court ought to accept it. But even on a review of a finding of the Federal Trade Commission the Supreme Court found and held as a fact that the transaction was for sound business reasons. The company that was being bought was in financial difficulties and either had to be refinanced or go through a reorganization. The Court found that there were sound reasons for the transaction and that it would not prejudice the public interest. Now, there was a case under a statute which forbade the acquisition of stock the effect of which might be to substantially eliminate competition. That is the Supreme Court.

Now, the other case which is in the competition aspects infinitely greater than this was the Republic Steel case. That was a District Court case decided by the District Court of the Northern District of Ohio. The Republic Steel Company, one of the major steel companies, in fact I think probably the third, acquired the Cor-  
 224—98 rigan McKinney Company; not perhaps of the first rank, but a company several times larger than Consoli-

dated in this case, and the two companies were in active competition in a number of places in many of the products—not all of them, but in many of the rolled products manufactured and sold by steel-producing companies; and the District Court found that there were sound reasons for that merger; that the public interest would not be prejudiced, and Why? Because the competition in the fields where those two companies competed was so keen and would remain so keen that the public interest would not suffer.

Now, while only two of those cases were Supreme Court cases, one under the Sherman Act and one under the Clayton Act, the Department of Justice accepted the decisions in both of the other cases and there was no appeal.

The other case we recite that is interesting, although it arose in a peculiar manner, is the Hercules Powder Company made a contract to purchase assets of Atlas; those two companies had resulted from the decree in the DuPont antitrust suit, and they actually applied to the Court which of course was charged with the execution of that decree. It was a statutory court that decided the case, a three-judge court. They applied to the court for permission to carry out that purchase and sale, and while it was not strictly a case under the Sherman Act because the question was whether there was a violation of the decree, but a question of the Sherman Act was involved because although the thing

224—99 might have been forbidden by the decree it would have been prohibited even though it was not a violation of the Sherman Act—of course it would not have been allowed if it was a violation of the Sherman Act although perhaps not within the letter of the decree. On that question of competition Judge Wooley made the very pertinent observation which you will see it apposite here as the evidence is developed that although that would eliminate a competitor, that the competition that remained was ample to protect the public and that, as will appear in this case, the result would even strengthen the ability of the combined company to compete in that highly competitive field.

So we say that it must be accepted as fundamental to this case that on the first issue the questions of fact for your Honor to determine are, first, Were there sound business reasons? and, second, Will the public interest be prejudiced?

Now, on those two issues you will find that this case is unique. Ordinarily a negative is presented that there was no intent and purpose to restrain trade and that the public interest would not be prejudiced. We shall adduce evidence to establish to the satisfaction of your Honor that not only was there no thought, intent, or purpose to restrain trade or to monopolize, but that this contract was entered into for the soundest of business reasons—indeed, for compelling reasons; and on the question of public interest we

shall show you that competition in the field which the Government adopts for the purpose of this case, the so-called Consolidated market, the eleven states, that competition will be strengthened, and that the paramount matter involved, that of public interest, will be greatly promoted; and on that question we shall be in the very unusual position of being able to prove our point by no less authority than the Government of the United States itself.

Now, you have heard about rolled steel products and fabricated steel products, and you must be wondering something about what they are unless you know more about the steel business than I did before I became associated with the steel company. All integrated steel companies produce steel—that is, steel ingots, and they put those ingots through various rolling processes to produce what we call rolled steel products. The ones involved here or principally involved here are two: plates and structural shapes. Incidentally, in the fabrication of plates and shapes some sheets and some bars are used. Now, the difference between a plate and a sheet is largely one of size, thickness, and strength. You will notice by the side of the train as you go to and from Philadelphia and New York these large storage tanks for oil companies. Those have to be pressure tanks. They have to be made of strong material. They use plates to make them. You ride in your automobile and the frame of the automobile is made largely from shapes.

Now, the Consolidated Company is not a steel company.

It does not produce steel. It does not roll rolled steel products and has no equipment for doing it. The

United States Steel—when I say United States Steel I am talking about United States Steel and its subsidiaries. United States Steel is in the business of producing steel and rolled steel products. When it was organized, as the evidence will show, it had sixty-six percent of the steel producing—not steel products—steel-producing capacity of the entire country; and since counsel has suggested that we are to be adjudged as to what we will do in the future by what we have done in the past, that percentage has gradually been reduced to thirty-two percent. In other words, the advancement of the country and the industrial development of the country and the greater tonnage thus afforded or consumption of steel thus afforded has largely been taken up by the competitors of United States Steel, and that is the way it monopolizes the main business which it conducts, but in that business it is not at all competitive with Consolidated, the seller, which is not in it at all.

Now, fabrication is another matter, and I take it counsel contends that anybody that can fabricate steel products, rolled steel products, is a competitor of anybody else

that fabricates or can fabricate steel products. Within limits probably that is true, because it is possible what one man can do, or what one concern can do, another can do, but the kinds of business that you can group under the general term "fabrication" is, well, there is no limit to it.

Every manufacturer who uses steel to produce articles of commerce, fabricates it by repetitive processes, to be sure. That is fabrication. Consolidated is not at all engaged in that kind of fabrication,

The other kind of fabrication is where by special design, not by repetitive process turning out in mass, but by special design you fabricate plates or shapes, as the case may be, to fit a particular object, project, or structure, such as a building, a bridge, these storage tanks you see, and the like, specially fabricated to fit a particular object, and the more difficult the fabrication, the greater the strength required, the greater the engineering skill demanded, and some fabrication calls upon the very greatest skill because they have to determine stresses and strains to a very, very accurate degree. It depends on the extent that people can engage in that business.

No, it is true that any fabricator can fabricate 224-103 most anything if he wants to. We had an example during the depression. One of the big locomotive companies, because it didn't have much business for its locomotives, could fabricate. It fabricated steel to make locomotives. It undertook to go into the structural fabricating business but it soon found that it didn't pay.

Now, under the Government definition, the Baldwin and the American Locomotive Works are competitors of the American Bridge Company, which mainly fabricates very large structures, such as railroad bridges, highway bridges of the major type and loftier buildings which requires the very greatest engineering skill, the very most complete and the most competent personnel of engineers and others involved in such business.

Now, the Consolidated is engaged only in the second kind of fabricating business which I referred to, namely, this kind where you design the material for a particular object and you have to fabricate it to fit the very place where it has to go in that object.

You can see what is involved in the fabrication of the steel to go in, we will say, one of these tall buildings. They have to be fabricated, each part, and delivered on the job to fit the particular place where it is designed to go in the building, and haven't got

to indulge in your imagination very much to see what 224-104 kind of equipment you have got to have to engage in that kind of business.

Now, we shall show to your Honor just exactly how, where and

in what respect Consolidated and the Bridge Companies of U. S. Steel—by the way, I didn't tell you this—there are two kinds of fabricating business of this class that I am speaking of by special design. One is plate fabrication, and I gave you an example of plates fabricated for these storage tanks. One is plate fabrication. No subsidiary of the United States Steel Corporation is engaged in plate fabrication. It constitutes three-fourths of the Consolidated's business, but, of course, under the counsel's definition the plate fabrication is competitive with structural fabrication.

Now, the structural fabrication constitutes, we will say, a quarter, that is the maximum, of Consolidated's business, 25%. So that as to 25% of the Consolidated's business, on its face, you might infer from what has been said up to date, that that 25% is competitive with the two bridge companies of U. S. Steel, the American Bridge, and the Virginia Bridge. Even so, if we don't go any further, even so we say that the evidence will satisfy your Honor that there is no unreasonable restraint of trade involved, but we shall not stop there as the Government has done. Indeed, the Government stops long before that point.

We shall show you by a witness and whom I undertake to say there is no more competent person in the United States to speak, just what the competition is, not only in the country  
224—105 as a whole, not only in the eleven states which the Government selects as the Consolidated market, but in each one of those states; and we shall show you not only what the competition between Consolidated and U. S. Steel is; we shall show you what the real competition is in every one of those places and in the country as a whole. When that has been done your Honor will find that the competition between the parties to this transaction is really, in fact, diminis, and has no consequential effect whatsoever on the general subject of competition in which the public is interested.

I think at this point I ought to tell you a little of what the evidence will develop on the question of public interest. The Government, apart from this question of competition, asserts that there is a restraint of trade and commerce, an unreasonable restraint of trade and commerce in two respects, and that the Geneva Steel Company is involved in that restraint.

Counsel has seen fit to mention but one of them so far in the case, but the Government asserts two respects in which the Geneva Steel Company is involved in the restraint of commerce and its claim that one of the respects is this:

It produces rolled steel products, plates and shapes, and the Government says that it is tying up a part of its production to supply the requirements of Consolidated; that that will take

224—106. that much production out of the open market and that in that respect trade and commerce will be unreasonably restrained.

The COURT. I am afraid I don't follow you right there, Governor. Do you mind repeating just that portion?

Mr. MILLER. Claims that a part of the production of Geneva Steel Company of plates and shapes is, as a result of this transaction, to be tied up to supply the requirements of Consolidated; that that will take that much tonnage out of the open market and that that is a restraint, an unreasonable restraint of trade and commerce under Section 1 of the Sherman Act.

The COURT. I didn't recall closely enough the connection between Geneva and Consolidated.

Mr. MILLER. You would not think it had any, but it has a very important connection, as I will show you.

The Government ties Geneva into this case very heavily and we do, too, because it supplies our controlling purpose.

The Geneva Steel Company was purchased from the Government by U. S. Steel. It produces plates and shapes and, to be exact, one hundred thousand tons.

Counsel read you a lot of figures of the production, total sales, National Tube, this, that and the other thing. We are dealing with the company, the Consolidated, on the average. 224—107. They take the war business and magnify the business of Consolidated by a billion and a half of war business, which the Government knows is entirely terminated, and it even argues that because it could do a billion and a half of business for the Government that is a great potential competitor in the future because it was able to do that. Well, in that event, every patriotic citizen in the United States who devoted his facilities to the production of raw material is a competitor, within the definition of the Sherman Act, of the American Bridge Company.

Consolidated consumes 100,000 tons of plates and shapes roughly within a year, 75,000 of plates and 25,000 of shapes, and you can see what a small thing we are talking about here. The only normal period to judge the normal business of these companies isn't the 10 years including the war years. For the present situation we are having effects of the war especially in the steel industry where instead of looking for customers every steel company is now trying to satisfy its customers and not looking for new ones.

The real period is from 1937, of that 10-year period, from 1937—perhaps if you include 1941 you have got a war year as the war started, as far as we were concerned, in 1941 and the defense program was started in 1940—but even taking those years the Consolidated Steel Company bought 500,000 tons roughly of steel produce, 100,000 a year. How much do you suppose was pro-

224—108 duced and sold? 200,000,000 tons. Consolidated had about one-quarter of one percent of the consumption of the rolled steel products produced in the entire country during that period.

The Government says that to tie 100,000 tons of the production of Geneva up to supply the requirements of Consolidated is an unlawful restraint of commerce. We say, in the first place, it is not within the purview of the Sherman Act. But, we say, in the second place, that factually it is absurd.

And here the Government comes in again. The Government itself approved—I think it did more than that—tying up 380,000 tons of the production of Geneva to supply the requirements of a plant of Columbia being constructed now at Pittsburg, California. The fact is, Columbia, in order to give Geneva Steel Company a chance even to operate has allocated that tonnage, which it could buy perfectly well from one of the eastern subsidiaries of the United States Steel Corporation, which has water transportation to Pittsburg, which is right on the water, it could buy it perfectly well, insofar as the corporation was concerned, and it would make more money if it sold it that way. But Columbia is tying 380,000 of its requirements with the approval of the Government. The Government sold us the plant on the understanding that we do that in order to supply a backlog which can even make it possible for Geneva to operate.

224—109 Now, this transaction, it is hoped or it is expected, will supply an additional tonnage of 100,000 tons. It is hoped that it will be more. They estimate or they hope to get it up to 130,000, perhaps, but judged by the past, at least 100,000.

Now, what will that do? That will bring the production of Geneva up to around the break-even point, and then Geneva will still have a capacity of three or four hundred thousand tons of rolled steel products for which we would be very thankful to the Government if it would supply Geneva a customer. Now, that is that claim that brings Geneva in. That one was stressed by counsel in his opening.

The COURT. Is Geneva wholly owned by U. S. Steel?

Mr. MILLER. Yes; and I will tell you a little more about it. The Government also maintained, and here is another one of its fallacies, an obvious fallacy, that we are tying up Consolidated's requirements of 100,000 tons to Geneva to give it a backlog and that that will prevent other producers of rolled steel products from selling rolled steel products to Consolidated, and counsel has stressed that here this morning, that that, he says, is an unlawful and illegal and unreasonable restraint of commerce under the Sherman Act. As to that we say, first, that it is not within the purview of the Sherman Act at all, but this is how the Government

brings it within the purview: He says that our purpose is to prevent our competitors from selling rolled steel products 224—110 to supply the requirements of Consolidated, that that is our purpose. How does he prove it? He says that we admit that our purpose and object in acquiring Consolidated is to supply a backlog for Geneva, and he says that is an admission that we bought it for the purpose of preventing other people from selling steel to Consolidated. Well, now, I think that it is a very mean and vicious thing. I think it is illegal and unfair competition certainly within the Federal Trade Commission Act for one competitor to purchase or sell to a consumer for the purpose of preventing somebody else from doing it. I think that anybody who engages in that kind of business ought to be stopped. But buying something because you want and need to use it does not justify the inference, and upon that alone the Government rests its case or on the proof as it now stands on our statement, and it draws the inference that we are doing this thing just to prevent other producers from selling rolled steel products to Consolidated.

Now, Consolidated's purchases, as you have seen, is not a drop in the market. There isn't any lessening of competition among the producers of rolled steel products, the same rolled steel products, who will be in the business of competing not only in the Western states, but throughout the United States if the competition is very keen. They do not even venture to suggest in their pleading that there is any attempt to monopolize the production and 224—111 sale of rolled steel products. That would be a little too much even for the plaintiff to allege in its complaint and it does not allege it.

Now, those are the facts in relation to that claim of restraint of trade and commerce.

Now, that brings me to this: Thus far your Honor has not heard much about Geneva Steel Plant, but still it looms very large in this case, not only because of these charges of the Government on which it bases its claim that it is involved in unlawful restraint of trade, but we not only admit, we assert, your Honor, that we made this contract with Consolidated for the controlling purpose of providing a backlog to make it possible for the Geneva plant to operate commercially; and now that brings up matters which your Honor, I am sure, will be exceedingly interested to know about, and that is What led to the sale by the Government of the Geneva Steel Plant to United States Steel? And What were the Government's paramount purposes in doing it? We shall prove it, your Honor, by official reports of the public officials charged with the responsibility in the matter to the Congress, and briefly I think it might be helpful if I just told you what those reports will disclose.

Am I taking too much time?

The COURT. Not at all, sir. At some time within the next fifteen minutes I would like to take a recess.

Mr. MILLER. Whenever your Honor feels like it.

224—112 The COURT. I would like to do it at some time convenient to you, Governor.

Mr. MILLER. I can take it at one time as well as another.

(At this point a brief recess was taken.)

Mr. MILLER. It will appear, if your Honor please, from the official Government reports to the Congress briefly as follows:

Geneva Steel Plant was constructed by the Government during the war for war purposes to produce plates and shapes for ship-building. It was located where it was for strategic military reasons. It was designed, constructed, and operated during the war for the account of the Government by the United States Steel Corporation without charge or fee as a public service. It had a steel-making capacity of 1,280,000 tons and a rolling mill capacity rated at 950,000 tons. Now, so that you will understand what that plant is, it has to have all of the anterior facilities to produce the steel to roll the plates and shapes—the ore mines, iron and steel, the limestone quarries, the coke plants and blast furnaces, the steel furnaces, the rolling mills, and all of the auxiliary facilities for a complete steel plant.

At the close of hostilities the plant had to be closed down for lack of business. The Government was its own  
224—113 customer. It was in due course declared surplus as other plants constructed by the Government were declared surplus, and the disposition of the plant had to be decided upon.

Now, as a matter of fact, the disposition of the Geneva plant had been the subject of much public agitation long before the termination of hostilities and some people had argued in the public press and in other places that it should not be disposed of by the Government to an eastern steel company because the Eastern steel company would be interested not in making the Geneva operation successful, but in subordinating it to the needs of the Eastern steel plants which might want to sell their products in the Western market. Naturally, having constructed and operated this plant for the Government as a result of which a substantial community was built up around it and dependent upon it for employment, the Steel Corporation took a considerable interest in not having a ghost town at Geneva as a result of the suspension of the business of that company, and before the close of hostilities it had caused a very thorough study and research to be made of all of the economic and market problems on which the question of the successful

operation of that plant for peacetime use depended. After much consideration of the subject the Directors of the United States Steel Corporation, just before the Armistice, in part no doubt because of this agitation against an Eastern company 224-114 having the plant, decided that United States Steel Corporation would not attempt to acquire the plant and so notified the Defense Plant Corporation which had the title.

Shortly after VJ-day, Mr. Simington, who became the Administrator of the Surplus Property Administration in place of a Board that had been theretofore in charge, made a public report to the Congress on this question, and I am mentioning this to call attention to the significance of the fact that this was a question much agitated before the public. He stated the regulations and conditions under which he proposed to sell or dispose of the plant by lease or sale. He stated the history of the plant; he stated the connection of the United States Steel Corporation, the fact that it had made this decision and so notified the Defense Plant Corporation; the fact that the Administrator had caused the integrated steel industry to be circularized in an effort to arouse interest in this project, and out of twenty-seven inquiries addressed to twenty-seven integrated steel companies he had received twenty-five, all in the negative. They were not interested.

Three companies had manifested an interest: The Colorado Fuel & Iron Company, which has a plant in Colorado, the Kaiser syndicate, which has a plant at Fontana, California, and, naturally, the United States Steel Company, since it had built and operated the plant; and no doubt because of this agitation he went out of his way to say that he would be happy 224-115 to receive a bid from the United States Steel Corporation for either a lease or sale of the plant to which he would give careful consideration.

At that very time and prior thereto the Surplus Property Administration had caused a complete scientific survey and study to be made of the economic and engineering and operating problems upon which the future operation of Geneva depended. This was made by a very high-class competent engineer, accepted by the whole industry as authority, and in December 1945—and these dates will have some significance in connection with other evidence—in December 1945 the bids for the Geneva plant were invited. The time for submission of bids was finally extended, I think, to April 30 of 1946.

Now, again, and I won't go into the reasons for it, but Mr. Fairless will relate them if they become important, the Steel Corporation or Mr. Fairless caused a further study to be made of this situation. The result of this all appears in the reports, as a re-

sult of which on the 30th of April 1946, United States Steel Corporation reconsidered its action of the year before and authorized Mr. Fairless to submit a bid for the Geneva plant.

The bids were opened. The Kaiser syndicate had not bid. The Colorado Fuel & Iron Company had submitted a bid for a 25-year lease, the lessor company to be organized with a capital of \$25,000 to be raised by an issue of stock to the public and the bidder to have an option for the purchase of the plant; the Government, however, to expend nearly \$50,000,000 more in reconverting the plant to peacetime uses. The other bidders were not, in fact, as much and could not be characterized as a bid.

After all this long discussion and attempt to arouse interest in the Geneva Steel Plant the United States Steel Corporation, no doubt influenced for psychological reasons because of its having been connected with the thing, was the only bidder which offered to hazard any substantial sum of its own in an undertaking to make that operation a commercial success. It offered \$47,000,000 for the plant and inventories. It offered to expend of its own money \$18,500,000 for reconversion, largely to equip the plant to produce this 380,000 tons of steel for the finishing mill then being constructed at Pittsburgh, California, at a cost of \$25,000,000. That plant could perhaps more profitably to the Steel Corporation have acquired that product from the Tennessee Coal, Iron & Railroad Company at Birmingham, which can ship all the way by water to Pittsburgh. But the Steel Corporation said in its bid that it would spend this money to reconvert the plant for the purpose of supplying this product to the Pittsburgh plant, thus to give the Geneva plant this backlog of 380,000 tons; that it would establish basing points at Geneva as it has done, and that it would operate the plant as fully as was practicable; and it was committed by its bid when accepted to an expenditure of \$90,000,000 to make the operation of the Geneva plant a success, because the \$25,000,000 being expended at Pittsburgh, California, was to be turned to the support of the Geneva plant.

Those bids were all submitted to the Congress in the report by the War Assets Administration and with the decision to accept the bid of U. S. Steel with the reasons why. Now, these reports show on their face that whether the Geneva plant could be operated successfully, whether it could get a sufficient market backlog or outlet was a matter of serious risk, and the War Assets Administration stated as its paramount reason U. S. Steel offered the best—in fact the only—I guess they didn't say "only"—assurance of the successful operation of that plant, the employment which it would give and the promotion of the industrial development of

the western territory that had long been crying for steel to be produced there instead of in the East and sold there on eastern basing points, and by notifying other consumers of steel to locate in that area because of the supply of the steel products that would be thus assured it would greatly promote the industrial development of that area, and that was the question of paramount public interest for which the Government itself, in effect, committed the United States Steel Corporation to an undertaking to make a success of that operation.

224—118 Now, before that transaction could be consummated under the statute, the Act, surplus property Act, the Attorney General had to give an opinion as to whether that sale would offend the antitrust laws. He rendered such an opinion, I think it was, on the 17th of June 1946. He said unequivocally that it would not.

Counsel has hinted here, or talked about power. He is talking about size, I suppose. Of course, it is not an issue in this case. The Supreme Court has frequently decided and the Attorney General, in his opinion, quoted one of the latest utterances of the Supreme Court, that by Judge Cardozo, to the effect that mere size short of monopoly wasn't an offense against the antitrust laws, and the Attorney General himself is the authority which we now cite to your Honor in contravention of the position which you heard taken here this morning by his representative.

What did Geneva do to United States Steel in respect of size? It added to its steelmaking capacity 1,280,000 tons. The acquisition of Consolidated will provide an additional backlog to the Geneva plant of 100,000 tons and assure, together with the primary backlog supplied by the Pittsburgh plant of Columbia, will give assurance that it can at least operate at the break-even point without making any money, and whatever it secures above that was in the lap of the gods.

Of course, the present situation is no test of what is going to happen. We aren't yet back in normal times.

224—119 The Geneva plant is now operating quite fully shipping steel to the East because there is such a shortage of steel that the consumers of steel are willing to get it from any source no matter what the transportation costs may be, but when the normal state of affairs is restored United States Steel will still have a headache over carrying out the undertaking which it assumed when it purchased that property and committed itself to an expenditure of that large sum of money.

Now, this is where the subject ties in this case. Before, sometime before, it was decided this sale was made by the Government, I think the first time in September of 1945, right after VJ-day and again in February or March of 1946, Mr. Beach, the President

of the Consolidated, approached Mr. Fairless with a proposal to negotiate a sale of Consolidated or its assets, that was undecided, to United States Steel.

Now, at that time, as matters stood on the record, the United States Steel Corporation had then decided not to acquire the Geneva plant when the first proposal was made. When the second one was made the question was being reexamined. Corporation directors had not decided or authorized anything. It hadn't even reconsidered its previous decision. Mr. Fairless was noncommittal. He listened to Mr. Roach's suggestion. The sale of the

Geneva plant was consummated at once. Mr. Fairless' staff, operating and engineering, took up the problem of how to make that plant go. One of the very first decisions which they made was that it was indispensable, to assure the operation of that plant, that United States Steel Company now go into the fabricating business on the West Coast.

I hadn't told you, your Honor, that the fabricating plants of the Bridge Companies was all in the East. While they do sell in the West—and a witness will give you the details of that—they weren't in the fabricating business in the West, and we are not in a position to get the proportion of the business which would logically come to a company located there.

The main competitor of the American Bridge Company and of the United States Steel Corporation as a whole, the Bethlehem Steel Corporation, had acquired, years before, fabricating plants on the Pacific Coast and had improved their facilities and was perhaps the leading fabricator on the West Coast. The management of United States Steel, with all of its experience in dealing in this business of rolled steel products, marketing rolled steel products and fabricated steel products, advised Mr. Fairless that it was a must that U. S. Steel go into the fabricating business on the West Coast if a sufficient backlog was to be assured for Geneva plant to warrant its operation commercially.

There were two ways that could be done. One, of course, was to erect fabricating facilities new, and plants were actually studied, and I don't know, but made, for the construction of such plants as were then considered and sites were actually selected for the locations.

Well, at that stage Mr. Fairless, recalling Mr. Roach's proposal, and the Consolidated counsel will explain to you and Mr. Roach will testify to you as to his reasons, we can only explain our reasons, Mr. Fairless then called up Mr. Roach and told him that he was prepared to discuss a question of a possible purchase.

I am not going to go into details. It will take too much time. The witnesses will tell you just what happened, the studies that

were made, how meetings were held, how committees were appointed to study the business and the plants of Consolidated, how finally a committee was appointed by Mr. Fairless to negotiate the price—Mr. Fairless himself didn't participate in that—how the negotiation was carried on, how they finally arrived at what both were willing to agree was a fair value of just the physical property with no allowance whatever for good will, a fair value of the actual physical property, and in determining whether we would acquire existing facilities, as the Bethlehem Steel Company had done, or construct our own, we had this problem.

Construction costs were very high. Our chief engineer and his staff made an estimate of what it would cost to reproduce the facilities that Consolidated had. He will tell you several million dollars more than the purchase price. But under the present conditions it would have taken at least three years to construct them. You can't get construction material every day, you know, and you can't be permitted to construct everything you want to. There are plenty of fabricating facilities on the West Coast, indeed; a great excess for the market there, and it was even problematical whether we would be permitted at this time. But if we were it would have taken three years and that was too long for Geneva to wait, and the result was, for the reasons which I have stated, a price having been agreed upon and negotiated that both sides thought was fair, this contract was at an end, and it is going to be for your Honor to say whether it offends the Sherman Act.

Now, we have been supplying the Government, the Department of Justice, a great deal of statistical information. Our people have been working on that subject steadily for a long time in an effort to present every possible view of this situation of this question of competition. The Government hasn't seen fit to offer any of it. Of course, we shall.

Roughly, your Honor, it will show that the actual competition, where there is actual competition, the amount of it is so small that there is nothing to talk about. There is occasional competition, of course, as there naturally would be. The witnesses will explain to you just how and what the situation is and what the situation will be after this transaction has been consummated.

Roughly, the American Bridge Company now has a little less than 20% of the capacity or consumption of the country. When the Steel Corporation was organized, the Bridge Company was one of the original constituents. It had between 40 and 45. The Government even contended in the dissolution suit that it had 75%. It is now on the other side. It was then trying to make out just the opposite of what the Govern-

ment is trying to make out now, but it had 40 to 45%. That percentage has been gradually reduced down to this 19½ or 20%.

The largest other competitor is the Bethlehem Steel Corporation now entrenched on the Pacific Coast with probably the leading fabricating plants there. It is about equal in the fabricating business with the American Bridge Company.

Now, this is a highly competitive business. Probably there isn't a business in the country more competitive because of the fact that it takes so little capital to go into the fabricating business if you do in a small way and the extent to which you go in it determines how far you can go and what type of work you can engage in. Every locality in the country has them. Machine shops even engage in local fabrication. There are literally hundreds of fabricators.

We shall give you the actual facts as to those that are of the grade to be considered. But the fabricating business itself is such that any one who had the slightest experience or knowledge of it would not be foolhardy enough to think that 224—124 he could monopolize, and you will be satisfied that nobody ever dreamed of succeeding in doing any such thing or of restraining trade and commerce.

Now, we shall put in evidence these statistics and point out to your Honor the conclusions to be drawn. We will show you the exact percentages, and I hate percentages myself because I think that you get a much better view of the situation by knowing what the actual fact of competition is and where it is and how it is carried on. But we will show you the exact percentages, and I won't undertake to give them now, in detail.

As a whole, related to the eleven states, related to each of the eleven states, we will tell you who the competitors are and what they do and just how the competition is carried on, and from that you will be able to conclude, I think, that there is no possibility of prejudice to the public interest from this transaction, but that the fact is that by combining the present facilities of Consolidated, supplementing them with the facilities of the Bridge Companies from the East, a combined fabricating institution to be created, which, for the first time, will be able to compete successfully with the strongest fabricator now on the Coast, and nobody can monopolize that business if they should undertake to do so.

We shall try to make our evidence as brief as possible. It would prolong this trial unduly if we called everybody concerned who has had a hand in it one time or another. 224—125 We shall limit our own evidence to those who have had and exercised the power of decision. All of those who did that will be put on the stand and you will judge whether they are telling you a story that can be accepted or not.

*Argument of Mr. Finger*

Mr. FINGER. May it please the Court, the thorough statement which Governor Miller has made renders it unnecessary for any extended statement to be made on behalf of Consolidated.

Consolidated is in accord with United States Steel in challenging the issues that are tendered and the charges that are made in this complaint.

We are also in accord with United States Steel in the position that this transaction was actuated by sound and legitimate business reasons. Necessarily the reasons which motivated Consolidated in entering into the contract for the sale of these properties are reasons which are applicable to it and, therefore, are not the same as those which motivated U. S. Steel.

My brief statement, therefore, will be confined principally to a general statement of what our evidence will show as to the reasons which motivated Consolidated Steel in entering into this conflict.

This company, Consolidated, was formed in December, 1928, so that it began business, as a practical matter, in the year 1929, which marked the beginning of the depression; that is, the year 1929 marked the beginning of the depression 224—126 period.

The company struggled through the depression years and its fortunes in time declined to a point where it was necessary for it to omit dividends on its preferred stock.

Along about 1936 its situation began to improve, and with the beginning of the defense program along about 1940 it was called upon to do and it did do a vast amount of war work.

Its profits from that work were very small in relation to the amount of business done, but because of the very large volume the company, at the end of hostilities, was in a good liquid position.

The question then was presented to the management of the company as to whether they ought, at that time, to consider continuing its business or whether it should avail itself of the opportunity, if there should be an opportunity, to sell its assets in the interests of its stockholders.

The steel fabricating business is a cyclical business, and the management of this corporation, although its fortunes had improved, had not forgotten its vicissitudes in the earlier years of its relatively short period of existence, and after consideration the management came to the conclusion that it ought to explore the possibility of a sale.

Now, the two largest steel companies of the United States, as every one knows, are United States Steel and Bethlehem. There are many fabricators of steel in the West.

224—127 One of them was Bethlehem. U. S. Steel, as Governor Miller pointed out, had no fabricating plant in the West. What could be more natural, therefore, that the management of Consolidated should turn to U. S. Steel as a possible buyer, and so the management did, in exploring this situation, have conversations with the representatives of the Steel Corporation.

Sometime in 1946, as Governor Miller has pointed out, U. S. Steel showed an interest in acquiring the properties, and this resulted eventually in committees of the two organizations being appointed to confer on the subject of price.

Both sides were agreed that the function of these committees was to be to endeavor to arrive at a fair price, but when they came to negotiate each side endeavored to obtain as advantageous a price for their respective principals as was obtainable, and, your Honor will hear from the evidence this was absolutely an arm's length negotiation. The representatives of Consolidated endeavored to obtain the highest price obtainable within what they felt they could justify as a fair price, and the representatives of U. S. Steel similarly contended for as low a price as they felt they could support as a fair price, and the result of negotiation was that the parties did agree on a price, and that price, as the testimony will indicate, was less than the replacement value of the properties.

So that I am sure your Honor will be convinced from the evidence, and that it cannot successfully be controverted, 224—128 that Consolidated entered into this negotiation for sound business reasons.

Whether they are doing the wise thing by their stockholders in authorizing the sale, or whether they would do better to continue this business, only the future can tell, but the matter is to be passed upon by the stockholders and the stockholders will decide whether they do or do not wish to consummate this transaction if there is no legal bar as the result of this litigation.

224—129 Now, on the question of whether this transaction will involve any prejudice to the public interest, we are in accord with all that has been said by Governor Miller on behalf of the United States Steel Corporation on that point. There is no particular reason that I know of why Consolidated's position should be any different, and it is not, except I might add this: The management of Consolidated did have an interest in seeing that these properties are continued to operate. They did not want them sold to somebody who might find it profitable to close them down. U. S. Steel because it had no fabricating plants in the West, because of its resources, because of its organization and personnel could logically be expected to continue to

operate those plants; and it is anticipated, of course, that they will operate the plants; so that from the standpoint of public interest we believe that not only will there be no prejudice to the public from this transaction, but that the public in fact will benefit; and one additional reason for anticipating that is that it is believed that the entry of U. S. Steel into the fabricating business in the West with plants in the West will strengthen and increase this competition in which Bethlehem, its next largest contender, is already in the field with plants in that area.

We therefore believe that this transaction should be sustained as one having been entered into for sound and legitimate business reasons and that your Honor will find that 224—130 so far as competition is concerned at the present time that when we consider the points of contact between the kind of fabricating business in which Consolidated is engaged and the same fabricating business in which U. S. Steel with plants only in the East is engaged that your Honor will find that by and large that competition is so small that it can't genuinely be said that there is any competition of any consequence at all between the two companies.

The COURT. I presume, Mr. Finger, that you take the position that Consolidated is not interested in the potential elimination of future competition except as it may have entered into the purchase consideration—that is, being wiped out of the picture, or that the potential future competition is not a subject for you to be interested in.

Mr. FINGER. Consolidated's position is it believes that the competition will be increased rather than diminished.

The COURT. I see.

(At this point the hearing was adjourned to Tuesday, June 17, 1946, at ten-thirty o'clock a. m.)

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TUESDAY, JUNE 17, 1947,

Ten-thirty o'clock a. m.

Present: As before noted.

Mr. MILLER. Shall we proceed?

The COURT. Yes; Mr. Miller.

#### DEFENDANT'S EVIDENCE

NORMAN B. OBBARD, called as a witness on behalf of the Defendant, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Mr. Obbard, where do you reside?

A. In Pittsburgh, Pennsylvania.

Q. You are an officer of the American Bridge Company?

A. Yes, sir; I am Vice President and General Contracting Manager of the American Bridge Company.

Q. How long have you been associated with American Bridge Company?

A. Since June 1, 1926.

Q. Are you an engineer by profession?

A. Yes, sir.

224—133 Q. Prior to coming to the American Bridge Company had you had previous experience in the kind of business that that company does?

A. Yes, sir; after graduation I went with the Truscon Steel Company of Youngstown, Ohio, July 1, 1924.

Q. Graduation from where?

A. I graduated from Cambridge University, England.

Q. What was the business of the Truscon Company?

A. They were in concrete reinforcing burr and light structural steel work, also miscellaneous products such as sash.

Q. What is the general nature of the business of the American Bridge Company?

A. They are structural steel fabricators.

Q. It is a wholly owned subsidiary of United States Steel Corporation?

A. Yes, sir.

Q. Is there one other subsidiary of United States Steel Corporation also engaged in that business?

A. The Virginia Bridge Company of Roanoke, Virginia, are also a wholly owned subsidiary engaged in that business.

Q. Are there any other subsidiaries of United States Steel Corporation except those two which are so engaged?

A. No; those are the only ones.

Q. Now, please tell his Honor briefly what your experience has been since you say you started in with the Truscon Steel Company. Just give a general brief outline of what you have been doing.

A. With the Truscon Steel Company I was engaged as an engineer working on concrete burr design for a short time and later on structural steel design. On coming with American Bridge Company I was employed as an engineer and worked on the design of structures.

In 1933 I was made a contracting engineer, which meant that in addition to design I did a certain amount of contractual work.

On June 1, 1940, I was appointed Assistant to the Vice President and General Contracting Manager. On February 1, 1943, I was appointed Manager of the Shipyard Division, which was a war-time division created for the purpose of building ships.

Q. For war purposes?

A. For war purposes. After the end of the war the shipyard operations were closed, and on December 1, 1945, I returned to my position as Assistant to the Vice President and General Contracting Manager.

On July 1, 1946, I was elected Vice President and General Contracting Manager of the American Bridge Company.

224-135

By Mr. MILLER:

Q. Have you been located during that period at different parts of the country?

A. My headquarters have been at Pittsburgh, but I have traveled over the entire country on specific jobs. From time to time I have been loaned to other companies. I have also gone abroad on the business of the company.

Q. Will you tell his Honor briefly where the plants of the American Bridge Company and the Virginia Bridge Company are located?

A. The principal plants of the American Bridge Company are located at Ambridge, Pennsylvania, and Gary, Indiana. Those are large plants adjacent to steel mills in the Pittsburgh and Chicago districts. We have smaller plants in the East at Trenton, New Jersey, and Elmira, New York. Those, I should say, are medium sized plants. We have a small plant at Minneapolis, Minnesota. We have a specialized plant for the production of transmission towers in Pittsburgh.

The Virginia Bridge Company has its principal plant and offices at Roanoke, Virginia, where there is a large plant; in Birmingham, Alabama, it has a medium sized plant adjacent to the rolling mills located there.

Q. Of the Tennessee Coal & Iron Company?

A. Of the Tennessee Coal & Iron Company.

Q. And that is also a wholly owned subsidiary of  
224-136 U. S. Steel?

A. That is correct, sir.

Q. Go ahead.

A. The Virginia Bridge Company also has a small plant located at Memphis, Tennessee.

Q. Well, now, those plant locations are all east of the Mississippi River?

A. That is right, sir.

Q. Do you have offices, or do the Bridge Companies have offices, business offices, in different parts of the country for taking orders, and so forth, or whatever they may be for?

A. The American Bridge Company has 13 district offices. From Denver—would you like a list of them?

Q. The farthest west is Denver?

A. The farthest west is Denver. East and west from Denver to Boston, and north and south from St. Louis and Cincinnati to Duluth.

The Virginia Bridge Company has contracting offices, five of them. The most westerly being at Dallas and the most easterly at Roanoke.

Q. While I happen to think of it, while we are on that subject, you have no offices in the Rocky Mountain and Pacific Coast states?

A. We have an office at Denver.

Q. Aside from Denver?

224—137 A. Aside from that, we have no offices.

Q. Through whom did the Bridge Company sell whatever fabricated material it sold on the West Coast prior to the acquisition of the Columbia Steel Company by U. S. Steel?

A. Prior to the acquisition of Columbia Steel Company, the Bridge Company sold its products on the West Coast through the U. S. Steel Export Company.

Q. And was that the company, generally speaking, which was employed and engaged in the business of selling steel for export?

A. That is right, sir. I should, perhaps, correct my name there. In those days it was the U. S. Steel Products Company. The name was subsequently changed to U. S. Steel Export Company, but it fills the same functions.

Q. In other words, the Export Company was the only selling agency that the Bridge Company employed to sell fabricated material west of Denver?

A. That is right, sir.

Q. And later on did the Columbia Steel Company take the place of the Export Company?

A. They took the place of the Export Company and do all the work that the Export Company did in that area.

Q. And you have no—and when I say “you” you will understand I mean the American Bridge Company—has no office in that territory west of Denver?

224—138 A. No, sir.

Q. Since there are two subsidiaries of U. S. Steel engaged in this business I infer that they are not competing with each other?

A. No.

Q. Do you have to do with the coordination of their work?

A. Yes, that is part of my job.

Q. Do both companies make estimates on projects on which you decide to bid?

A. That is so. Both companies operate as individual companies and make their own estimates. On occasional jobs in which

it is doubtful which company could best bid, both companies make their own estimates and the lower estimate is used as the basis for the bid.

Q. Only one of them puts in a bid?

A. Only one puts in a bid.

Q. And that is always the one having the lowest estimate?

A. That is right, sir.

Q. Now, has it been a part of your duties and is it to acquaint yourself with all of the conditions throughout the country affecting that business marketwise, competitively, and the like?

A. It is. It is a very important part of my business.

Q. Have you done so?

A. I have, sir.

224-139 Q. You claim to be acquainted with it?

A. As far as I reasonably can be.

Q. Will you briefly describe to his Honor what a fabricating plant consists of, taking some of the smaller ones? You have mentioned small and large. Just explain the range of fabricating plants and what they consist of.

A. Well, a fabricating plant—that is to say, a structural fabricating plant—

Q. That is what we are talking about. Oh, stop right there.

Mr. MILLER. I withdraw the question.

Q. I will ask you a question or two about this fabricating work. How many general kinds of fabrication are there of steel products?

A. Well, apart from the manufacturing processes such as are followed by the automobile and refrigerator and similar manufacturers—

Q. Well, stop right there. These manufacturers that you speak of fabricate steel products to enter into the particular article of commerce which they produce?

A. In that sense they are fabricators.

Q. American Bridge Company is not that kind of a fabricator?

A. No, sir.

Q. You are familiar with the Consolidated Steel Company?

224-140 A. Yes, sir.

Q. It is not that kind of a fabricator?

A. No, sir; it is not.

Q. That is fabrication by repetitive processes to produce commercial articles that enter into the channels of trade and commerce?

A. That is right.

Q. How do you describe the kind of fabrication that the American Bridge Company is engaged in?

A. Well, we undertake contract work—that is to say, we con-

tract to fabricate specific structures, buildings, or bridges for a specific job and for a specific customer.

Q. And on a specific design?

A. And on a specific design.

Q. Well, is that business divisible generally?

A. Yes, sir; it is generally divided into structural and plate fabrication.

Q. Do you consider those two kinds of fabrication distinct?

A. We do ourselves.

Q. Well, let us see. Do they require different facilities?

A. They require different facilities.

Q. Do they produce entirely different products?

A. Yes, sir.

224—141 Q. Are the competitive conditions in the sale of them entirely separate and distinct?

A. The competition is—

Mr. WRIGHT. If the Court please, I think that calls for more conclusions than this witness would be able to put in one answer. It is certainly objectionable. That, I suppose, is one of the questions for your Honor to decide here. I don't think it is proper.

The COURT. Is your objection because it is leading?

Mr. WRIGHT. Not only is it leading, but it calls for a conclusion that the witness is incompetent to make. It is one that I think your Honor must draw from the consideration of numerous evidentiary facts. It calls for an ultimate conclusion which is asked to be drawn by your Honor from subsidiary evidentiary material.

Mr. MILLER. I confess the question is leading. I was trying to save time. He will state for counsel his reasons presently.

Mr. WRIGHT. The leading aspect of it is only a minor part of the objection.

Would you read the last question, please?

(The last question was read by the reporter as follows:)

"Q. Are the competitive conditions in the sale of them entirely separate and distinct?"

224—142 Mr. WRIGHT. I think it is obviously improper to ask him this with no foundation whatsoever. It seems to me he could develop what the various conditions are and for him to say what the competitive conditions are, and then I suppose it is for your Honor to judge whether or not they are sufficiently distinct to have some significance.

Mr. MILLER. I may put the cart before the horse. We will turn it around. I was trying to shorten this because there is a good deal of ground to cover.

By Mr. MILLER:

Q. Just describe the difference in conditions.

A. Well, the structural fabricating business with which, of course, we are entirely familiar, consists of fabricating to specific orders and to specific designs: buildings, bridges, permanent structures made in the most part from rolled steel shapes.

Q. You call them structural shapes?

A. Structural shapes.

Q. Go ahead with the other.

A. The plate fabricating business consists of fabricating tanks, penstocks, overhead storage tanks, and similar tank products, plate products, made principally from rolled steel plates.

Q. You did not mention pipe?

A. I said penstocks. Perhaps I should add large 224—143 diameter pipe.

Q. You see, I know so little about this business I did not associate the "penstocks" with the pipe.

A. Penstock, that is a large pressure pipe carrying water from a dam to a hydroelectric turbine.

By the Court:

Q. Would you say your business includes other dimensions of that same pipe?

A. Only the larger dimensions of pipe are made from plate; the smaller ones are made by other processes.

224—144

By Mr. MILLER:

Q. Now, since counsel wants the details, will you briefly describe any difference in the facilities required for those two lines of manufacture or fabrication, rather?

A. Yes. The facilities required are quite different. In a structural fabricating shop there is a large amount of equipment for shearing, punching and drilling structural shapes. There may be a small amount of equipment for such plates as are incidental to the assembling of the structural shapes, but the principal equipment is for shearing, punching, drilling, assembling, and riveting or welding structural shapes together to form structures and parts of structures.

Q. Well, right there, I don't think anybody has explained to the Court what we mean by structural shapes. I guess I forgot to. The reporter had me mixing up shapes with sheets, so I will ask you to tell his Honor what are structural shapes, generally.

A. Structural shapes are ones that are specially rolled to be suitably used for strength members in permanent structures, such as bridges and buildings. In other words, they are steel rolled into the shape of an I, and an H, a C, a channel or an angle. They are in sizes from upwards of three inches up to as big as 36 inches deep.

Q. Now, you get those shapes from the rolling mill?

A. That is right, sir.

224—145 Q. And you fabricate them. What do you mean by fabricating?

A. We receive and store them until we have the material sufficient, or the various rainges of material needed, to complete a job. Any job, of course, takes numerous sizes of these materials. You have to have quite extensive storage yards because these different sizes are not rolled every day; in fact, they are rolled, perhaps, every 60 days, so you have to have receiving yards adequate to carry quite a substantial amount of steel.

The steel is taken from there and cut to length, punched or drilled, in the thicker sections; moved on and is bolted together temporarily on what we would call the fitting skids, where it is fitted together; then it moves on to the riveting skids where it is riveted together or perhaps welded together; from there it moves on and in the case of a large bridge or important structure it is very often laid down complete in the yard; in other words, a complete suspension bridge tower is put down and the holes are matched and reamed to fit exactly.

Q. That material is delivered to fit into the building or erecting schedule just in the order of the particular structural shape that is required?

A. It certainly is. That is extremely important.

Q. That is a rather complicated business?

224—146 A. It requires facilities and knowledge on the larger jobs. For instance, a multistory tier building in New York, the steel has to be delivered from the sidewalks practically by truck. It has to be just the right steel at the right time. The whole structure has to go together fast so that the structural steel workers can get out of the way of the other building trades.

Q. And you have to have that all arranged in your yard to be able to ship and deliver at the right time the right structural shape fabricated to fit the place where it is going to go?

A. That is right, sir.

Q. And I suppose the size and extent of your yards, and so forth, depends upon the extent of the business in which you are engaged?

A. That is right. In our big plants, in addition to the general fabricating shops I described, we have specialized shops, such as forge shops, for making forged pins and members for bridges; rivet and nut and bolt shops for making the rivets and nuts and bolts we use in our business; machine shops for our machipe work. For instance, movable bridges, bascule bridges, and swing bridges require the large and heavy machinery.

Q. Which of the plants you have mentioned of the two Bridge Companies are able to do the largest type of work that you have been describing?

224-147 A. Only Ambridge and Gary.

Q. Does the Virginia Bridge Company have a plant large enough to do that?

A. Not the very largest.

Q. Not the very largest?

A. They would have to call on help from our largest plants to help them do the very largest work.

Q. Their plant is what you call a medium?

A. It is a medium-sized plant.

Q. You have described facilities for the production of fabricated shapes. To whom do you sell that product? Generally speaking, what class of people?

A. Well, our district contracting agents located in these various district offices have to keep in touch with prospective users of structural steel, who are in railroads, architects, consulting engineers, contractors, owners and all others who might be interested in the purchase of structural steel. They try to get their inquiries, examine them to see if the work is suitable for us and if we can make the shipments required and send them into our engineering offices for estimates.

Q. You claim to know and understand the structural fabricating business?

A. Yes, sir.

Q. You make the same claim as to plate fabrication?

224-148 A. No, it is not our business. We aren't in it.

Q. But you do know generally what is fabricated and what facilities are used in the plate fabrication?

A. I know the companies principally engaged in it.

Q. I mean not merely the companies, but the facilities that are required and the product that it makes.

A. Yes.

Q. Will you please tell his honor now what the plate fabricators do and what the facilities are they require?

A. A plate fabricator requires equipment for handling the plates which form the principal part of the plain material which he purchases; that is, he has shears, edge planers, and particularly a large amount of bending roll and forming equipment; hydraulic presses and the like for forming complicated sections, and he has, in particular, very large and high areas in which he can fit these preformed plates together for welding or riveting.

224-149 Q. Well, these facilities that you have now mentioned are quite different from those employed in the structural fabricating business?

A. Yes, we could never do plate work in our structural shops.

Q. That leads me to ask you this: Are either of the bridge companies of U. S. Steel engaged in plate fabrication?

A. No, sir.

Q. Are either of them equipped to engage in plate fabrication?

A. No, sir.

The COURT. Governor Miller, I don't want to interrupt you at all, but this case is going to be rather lengthy, and while we are quite peculiar in this District that we ask counsel to stand, yet if this case is going to take all the week I want you to feel perfectly at liberty to sit down and interrogate the witness at your pleasure.

Mr. MILLER. That is very kind, your Honor.

The COURT. You just feel no hesitation in doing it.

Mr. MILLER. I appreciate that very much. The truth is I have the unfortunate inability to talk when I am sitting down.

The COURT. Perhaps that is the reason I asked you to sit.

Mr. MILLER. But I very much appreciate your  
224—150 Honor's kindness. If I get overtired I might sit down and take advantage of your suggestion. But I quite agree with your Honor that the proper respect in the courtroom requires counsel to be on his feet when he is addressing the Court.

By Mr. MILLER:

Q. Now, you know generally about the business of the Consolidated Steel Company?

A. Generally, yes.

Q. Is it engaged in both plate and structural fabrication?

A. It is.

Q. Do you know which is the larger portion of its business?

A. I would estimate that normally about 25 percent of its business is structural and 75 percent plate.

Q. Well, you have just about hit the exact figures. We shall show exactly what it is.

Now, will you describe to his Honor just generally how this business is carried on? I don't mean the manufacturing part; I mean the selling end.

A. Well, I said that our district offices secure inquiries for work which in their belief we can quote upon economically, and they forward those to the engineering offices which in the case of the Bridge Company are at Chicago, Pittsburgh, and New  
224—151 York, and in the Virginia Bridge at Birmingham and Roanoke; and an engineering estimate is prepared and also a further screening of the work is made to see if in our judgment we can submit a satisfactory bid. We screen it so we don't go to the expense of making up estimates, which is an expensive job, on work that we know we are noncompetitive on.

Q. In other words, you have to have an organization to do that very work, don't you?

A. That is right, sir.

Q. And that is expensive?

A. That is expensive.

Q. To make estimates you can't make just guesses, I take it, or you would not stay in business very long.

A. We would not be in business very long if we did.

Q. So you have a screening process in the first instance to determine whether it is a project that you are interested in bidding on at all?

A. That is right, sir.

Q. I suppose there may be a great variety of reasons that bear on that question at different times and under different circumstances?

A. That is right.

Q. What are some of them?

A. Distance from our plants, which involves freight; the state of our facilities—that is whether we have space  
224—152 available in our fabricating shops to make the deliveries required, and the economy with which we could do the work are the principal considerations.

Q. What further?

A. In addition to the engineering estimate for the cost of fabrication we may get an erection estimate from our Erection Department for the cost of erection if that is involved.

Q. Oh, yes; I forgot to mention that. You erect as well as fabricate?

A. Yes, we erect a large amount of our fabricated work.

Q. Go ahead.

A. Then we mail the estimate and information back to the district office whose duty it is to put in a bid on the work. The bid, of course, covers the specific work that the inquiry covers. The district office puts in the bid and hopes that their bid will be low, and carries on any other negotiations that might be necessary.

Seeing that we are bidding generally on fixed specifications and a specific design, the low bidder almost invariably gets the work.

Q. There might be special circumstances, I suppose, under which the low bidder would not get it?

A. Occasionally we get the work on a bid that is not the lowest by virtue of some customer's belief in our past  
224—153 performance and future performance, but very seldom. The most that normally may happen is that you get an opportunity to perhaps meet the low bid.

Q. Of course, a good deal of this is public work and government work?

A. Yes, that is all done by sealed bids publicly opened.

Q. But even the private work, is that generally let by bidding?

A. The larger companies almost invariably let their work by bidding. All the railroads do.

Q. Are you generally familiar with the companies that are engaged in this business in different parts of the country?

A. Yes, sir; I am.

Q. You come in competition with them?

A. I do.

Q. It is your business to know what they can do, is it?

A. That is what my job is, sir.

Q. Well now, to save time, because it is such a large list, and so you won't take the time to cover the whole thing, I will ask you if you have made up from your own knowledge a list of the principal structural fabricators throughout the country?

A. Yes, sir; I have.

Q. Is this the list?

224—154 A. That is it.

Q. It is a correct list of your own knowledge?

A. Yes, sir.

Mr. MILLER. I offer it in evidence.

(The paper headed "List of Principal Structural Fabricators" was received in evidence and marked "Defendants' Exhibit No. 1.")

Q. I notice you have divided these into three groups; is that correct?

A. Yes, sir.

Q. What are they?

A. I divided them into large, medium, and small structural fabricators.

Q. And is that division based on what those words would imply?

A. Yes.

Q. Now, I notice that in the group of large fabricators you only have four companies listed: the American Bridge Company, Bethlehem, Fort Pitt, and the Harris Structural Steel Company. There are only four companies in your judgment in that class?

A. Yes, sir.

Q. I mean it would be five with Virginia. Now, which one of those companies has fabricating plants on the West Coast?

224—155 A. The only one is Bethlehem, which has a fabricating subsidiary or rather has three fabricating shops on the Pacific Coast.

Q. The Bethlehem Steel Corporation is also, just as its name implies, a producer of steel, an integrated steel company?

A. That is right, sir.

Q. It produces the rolled steel products that we are talking about?

A. Yes.

Q. Is that the only company on the West coast today—and I am speaking of the corporation as a whole now—the only integrated company or corporation which produces rolled steel products and also the structural material?

A. Yes, it is.

Q. Well, I notice that one of this list, the Harris Structural Steel Company, is starred. You have starred the companies that do any business in the West, haven't you?

A. Yes.

Q. That is what these stars indicate?

A. That is right.

Q. Oh, no; I am wrong.

A. Yes; the stars indicate business on the Coast.

Q. And the names underlined through this list indicate what?

A. That they have plants actually located on the Coast.

221—156 Q. And the stars indicate whether they are located there or not, that they do business there?

A. That is right. Well, we would say this: That we know they do business there because they have competed successfully with us. They may have done business that we don't know about, but we definitely know that those starred companies have done business because they have taken business away from us.

Q. Exactly.

A. On our bids.

Q. You have a record in your records of all the work that you bid on everywhere?

A. That is correct.

Q. And of the people who get business away from you?

A. In most cases we can get the name of the successful bidder from the purchaser.

Q. And these stars indicate companies that have taken business away from you?

A. That is right. Only within the eleven States under consideration.

Q. The stars are limited to the eleven States selected by the plaintiff here, the Government, what it calls the Consolidated market?

A. That is right, sir.

Q. Nine Western States and Texas and Louisiana; is that correct?

A. That is right.

224—157 Q. I notice that the Harris Structural Steel Company, which is one of this list of the major plants, hasn't taken any business away from you in these 11 States. Doesn't it do business in those States?

A. No; it concentrates mostly upon business in the New York metropolitan area where it is highly competitive and where there is a large amount of business.

Q. It is large enough to undertake any sort of a structure?

A. It could.

Q. But despite that fact it doesn't undertake to do so in the West?

A. That is right. It never has, to my knowledge.

Q. So you have never had any competition from that company, as far as you know, in this 11-State territory?

A. No. They are the only very large company that doesn't compete out there.

Q. Now, I notice that in the medium sized group you include the Consolidated Steel Company and note the location of its plants.

A. That is correct, sir.

Q. And from those underscored, including Consolidated, or excluding Consolidated, I notice that you have four that are located in that territory; is that right? You haven't got it before you?

224—158 A. I can almost tell you. I would say there are five, including Consolidated, located in the West Coast.

Q. That is right. Now, of that list of the medium sized, it appears that there are 27 and that 22 of them have successfully competed against you; is that true?

A. That is right, and the ones that haven't competed is largely due to some special circumstance.

By the Court:

Q. Why do you have a star opposite your own name as successfully competing against you?

A. That must be Virginia Bridge Company against American Bridge Company.

By Mr. MILLER:

Q. That is not true, is it?

A. No. We have a star there.

Q. I hadn't observed it. I thought you just told us that they didn't compete against each other.

A. No; they don't compete. It should not be there.

The Court. I understand.

A. (Continuing.) The ones in there that don't do business, or haven't, to our knowledge, done business, are Lackawanna. That

has been in the Buffalo district and has not done much business recently. Phoenix Bridge Company specializes on highway work and railroad work in the East; the Pittsburgh Bridge & Iron

Works specializes on light industrial buildings 224—159 and would be totally noncompetitive in this area;

Southern Steel Works is a new and growing concern and so far has not competed in these States that we know of; Whitehead & Kales specializes on automobile building work. All of the rest have competed, successfully competed, with us.

Q. You know that by the fact that you lost a job to them?

A. We certainly know it that way, sir.

Q. The list of the smaller plants seems to be longer, and just to summarize it, I see that you prepared the summaries, did you?

A. That is right.

Q. And the total of 68, of which 34 have successfully competed against you in this Western area?

A. That is right, sir.

Q. And 17 of them have plants in that area?

A. Yes, that is correct.

Q. And it would be 17 that haven't got plants?

A. 17 out of that area successfully competed with us in that area.

Q. Now, is that list, Defendant's Exhibit 1, is that an exclusive list by any means?

A. No; there are many, many more, and many of them would be insulted by being excluded from the list of fabricators.

Q. Is that the reason you prepared an additional 224—160 list to relieve the feelings of some of them?

A. No, sir.

Q. I see you have an additional list of 45 located in the 11 states?

A. That is right.

Q. I show you this document. Is that, to your knowledge, correct?

A. Yes. That was a complete list prepared by our commercial research man.

Q. And you know that the list is correct?

A. Yes.

Mr. MILLER. I offer that in evidence.

(List of 45 additional structural fabricators located in the 11 States is received in evidence and marked "Defendant's Exhibit 2.")

Mr. WRIGHT. I don't know, your Honor, whether you want me to cross-examine on these exhibits at the time they are offered here, or whether you want that deferred until the conclusion of the direct examination.

The Court. We ordinarily do it when he is finished with the witness, if that is satisfactory to you, Mr. Wright.

Mr. WRIGHT. That is agreeable with me.

Mr. MILLER. This is going to be a rather long examination and if it is to be broken up we will never get through.

224—161 Mr. WRIGHT. I want to record an objection to the data here, insofar as a large part of it refers, of course, to matters wholly outside the scope of the issues of the suit here.

The suit is concerned with competition in the 11-State area defined in the complaint, and a large part of the data included in all of these exhibits relates, as the witness has said, to competition wholly outside of the area.

The COURT. I am not quite clear. What part does?

Mr. WRIGHT. Well, for example, his Exhibit 1 has there listed as a large plant Harris Structural Steel Company, which he testified doesn't sell in the Consolidated market at all; it never has, and many of the other concerns on that list and on all of these lists don't do any business in the market at all.

The COURT. I see. He did mention one of them. The rest which are starred, there was no indication at this point that they didn't do business there. As I understand it, the star meant that it successfully competed with the Bridge Companies.

Mr. MILLER. That is correct.

Mr. WRIGHT. Perhaps I misunderstood him, but at least there is no showing, for example, that Lackawanna Steel Construction Company of Buffalo ever took a single structural fabricating contract in any of those 11 States, and there are  
224—162 other names on all of these lists of companies which simply don't figure in the suit at all.

The COURT. In order to save time, Mr. Wright, I don't presume that you want to object to the admission of the list. Certainly you could not object to the inclusion of that portion that would be admissible.

Mr. WRIGHT. Well, ordinarily we would. We would examine him and this classification, large plants, medium-sized plants, it may be that if on the cross-examination it will appear that the classifications are not what they appear to be here or aren't justifiable classifications, that, too, I think would be a possible ground for barring the exhibit.

Your Honor suggested, I thought, that we defer such examination as might develop other disabilities in the exhibit, defer that cross-examination until the end of the direct. Therefore, I am limiting my objection here to the disabilities which appear on the face of the exhibit, but I don't want to be understood as limiting our objections to the exhibit to those at all. It may be that on cross-examination there are other disabilities which will develop.

The COURT. The difficulty I am in is that I may have to hear

you now, because for the witness to use a list that will have to be in evidence, and it is now being offered in evidence.

Mr. WRIGHT. I think we better have the cross-224—163 examination on the exhibit now.

The COURT. I don't propose to have a cross-examination to each question that counsel has asked the witness about. It is most unusual.

Mr. MORRIS. If the Government believes it would have objection to a part of the paper that is offered in evidence, your Honor would, I take it, permit cross-examination with respect to that paper and certainly with respect to the portion of the paper that the Government believes to be objectionable, and would permit the cross-examination at the time the paper is offered or at least at some time before your Honor admits the paper in evidence.

The COURT. But wouldn't the same end be accomplished by moving to strike that part that is later proved to be inadmissible?

Mr. MORRIS. It occurs to me there are two possible ways to handle this:

1. To have the paper marked for identification at this time and the offer to put it in evidence renewed at the close of cross-examination unless, as your Honor has suggested, the examination that is to follow the admission of the paper in evidence is to relate to the paper itself, in which case the question<sup>g</sup> would not be proper until the paper had been put in evidence.

But, it seems to me, that subject to Mr. Wright's 224—164 thought about it—and I haven't had a chance to confer with him—that if the objection is made clear at this time that we don't waive our objection or the relevancy or the materiality of all parts of the paper by not stopping to cross-examine and stating our objection fully at this time, but may have full right to move to strike out any portion of it we believe is shown to be objectionable upon the completion of the direct examination and the cross-examination. That might serve our purpose.

Mr. MILLER. I fully agree any document that gets in here that doesn't belong here I am willing to have stricken out at any time.

The COURT. Thank you, Governor.

Mr. WRIGHT. We might make a further statement of our objection at this time. I might point out that there is no issue in this suit as to the question of competition between the defendants here and other fabricators. There is no claim made that the result of the acquisition would be to put the Steel Corporation in a position where it had no other competitors in this market.

The COURT. Will you state that again?

Mr. WRIGHT. I say there is no claim that upon consummation of this acquisition there will be no other competitors of the Steel

224—165 Corporation or, rather, of American Bridge Company, in this instance, in selling these products in the Consolidated market.

The charge in the suit is that this acquisition would eliminate substantial competition, and that competition is described in the complaint as the competition between the parties to the acquisition: between Consolidated and the various U. S. Steel subsidiaries. That is the only competition as to which the allegations of the complaint are addressed and the only competition to which plaintiff's proof was addressed.

The COURT. Am I correct in understanding now that the acquisition of Consolidated by Columbia, whether it leaves 100% of competition out, is immaterial?

Mr. WRIGHT: Well, I don't quite see what you mean.

The COURT. I mean a great mass of competition. Do you mean to say that the amount of competition remaining after this acquisition is absolutely immaterial to this case?

224—166 Mr. WRIGHT. No, I don't say that, your Honor, but

I say that this exhibit does not on its face purport to show the amount of competition that this transaction would take out of that market. On its face all this shows is a fact which was never put in issue, and that is that after the acquisition there will still be other people in the same class of business in a position to compete with the Steel Corporation. That fact there is no dispute about. Now, it does not require elaborate testimony or exhibits of this character to establish it. It simply is not in issue.

The COURT. I will do either one of two things, gentlemen. I will either allow Governor Miller now to have the exhibits marked for identification and use them, to be introduced later as evidence, or they will be introduced now in evidence subject to being stricken out or such portion of them subject to being stricken out as may be later on cross-examination deemed to be inadmissible.

Mr. WRIGHT. We would prefer to examine now on the particular exhibits as they are offered and as they go in.

The COURT. Have you any objection to that, Governor Miller?

Mr. MILLER. I think it is going to be a very time-consuming business to do it.

The COURT. I did not mean for them to examine now, but to have them marked for identification and have you go  
224—167 on complete your testimony.

Mr. MILLER. Oh, quite.

The COURT. Suppose we adopt that course.

(The paper referred to having previously been marked "Defendants' Exhibit No. 2 in evidence" was now marked "Defendants' Exhibit No. 2 for identification.")

By Mr. MILLER:

Q. Now, this additional list you have starred in the same way those who have taken business away from you?

A. That is correct.

Q. I notice on this additional list that out of forty-five on that list twenty-nine have competed successfully against the Bridge Company in that territory?

A. Yes; those are plants located in the territory.

Q. I was just coming to that. As a matter of fact, in noting the locations I notice that every one of that forty-five is located in the eleven states.

A. That is correct.

Q. One or the other of the eleven states?

A. That is correct.

Q. And of those there located on this additional list twenty-nine have competed successfully against you?

A. That makes us feel bad, sir.

Q. I know, but that is a fact?

A. That is right.

224-168. Q. You know it is a fact?

A. Yes, sir.

Q. This list I have just called attention to and which is now marked "No. 2 for identification" is of fabricators within that area. I hand you this paper now. Was that prepared the same way as the others of your own knowledge?

A. That is right.

Q. And that is what?

A. That is the list of fabricators not listed in our first list and outside the eleven-state area who have competed successfully for business with us in the eleven-state area.

Q. And are those of what you call the small type?

A. They were small fabricators.

Mr. MILLER. May I have that marked for identification as No. 3?

(The list of small fabricators referred to was marked "Defendants' Exhibit No. 3 for identification.")

Q. Those have all successfully competed against you within that area?

A. That is correct, sir.

Q. And their plants are located at the places indicated opposite their names?

A. That is right.

Q. Well now, even with this list is it exhausted?

224-169. A. By no means. There are innumerable small fabricators and we have a record only of the jobs which we actually bid and which they took away from us on that actual bidding.

Q. How does it happen that there are these innumerable small fabricators? Will you tell his Honor briefly?

A. Well, the lighter types of structural steel work of comparative simple construction do not require a great deal in the way of shop equipment, and there are many, many small local fabricators who build up quite substantial small businesses in furnishing structural steel for local contractors and local architects and home builders, small local manufacturing plants. All the work of that nature is very much a localized business, although occasionally as is shown by those exhibits those smaller fabricators will go further afield; they will build themselves up a local business and then go further afield and build themselves up and get some business at a distance from their plant.

Q. Now, I think that is sufficient on the general subject of relative sizes and the importance of it.

You have referred to distance from the plant where the work is to be installed. What relation does that have to this problem?

A. It has a very important bearing, because the simpler types of structural fabrication are a comparatively low-priced article, but they are heavy in weight. The freight rate and the cost of steel form a very important percentage of the total price. Therefore—

Q. Therefore a person however well equipped to do a job, distance would put him out of that particular kind of business at particular places?

A. That is right, unless there were other circumstances that entered into it.

Q. And does that situation, the effect of the transportation cost, obtain in lessening degree as you go toward the top of this kind of work and get to the heaviest?

A. That is correct, sir.

Q. When you get clear up to the top of these very large structures is the question of transportation cost of such importance?

A. No; because in the first place the cost per ton of the structure is higher, so that the transportation cost represents a smaller percentage. In the second place, the facilities of the manufacturing shop for economical fabricating of large structures enters into the picture and makes it possible for a large shop equipped with the proper equipment for handling large members to ship a considerable distance and overcome the higher freight charge by reason of its greater economy in manufacture.

Q. Well, these large jobs do not occur every day, do they?

A. They do not.

224—171 Q. And they occur in different parts of the country?

A. They are very widely scattered indeed.

Q. To be able to engage in them is it necessary to do business on a nationwide scale just for that reason?

A. It is.

Q. Is the smaller and even the middle-class group able as a matter of practicability, even though they could actually do the work if necessary, assuming they could, in a situation to compete on these large jobs?

A. No; they cannot.

Q. And that results in that class of work being restricted to relatively very few?

A. That is correct, sir.

Q. Are there other reasons why the smaller fabricators, and I am including now the medium class, even though if put to it and devoted to a particular thing, they might do it, why they are practically excluded from the larger type work?

A. Well, they can't turn out—they can't physically pass through their shops the large tonnages in the comparatively short intervals required for those very-large projects.

Q. I show you a photograph of the Transbay Bridge from San Francisco across the bay to Oakland. Is that a photograph of it?

A. That is a photograph of it all right.

Mr. MILLER. I will offer that in evidence.

224—172

Mr. WRIGHT. If the Court please, I haven't the faintest idea what this is supposed to prove.

Mr. MILLER. I am trying to explain to the Court visually something about what this business is so that the Court will understand it.

Mr. WRIGHT. I don't see the relevance of a picture of a bridge at this stage.

Mr. MILLER. But it won't hurt you.

Mr. WRIGHT. It may get clearer later.

The COURT. I didn't understand whether there was an objection to the offer or not.

Mr. WRIGHT. We object to it as irrelevant.

The COURT. Well, Governor Miller, while it is interesting to me, anything that will aid my knowledge, I can't see its relevance.

Mr. MILLER. I was only trying to illustrate this as I go along.

The COURT. Don't give up hope in trying to find some way of increasing my knowledge.

Mr. MILLER. Well, I see that your perceptions are very keen.

Will you mark it for identification?

(The photograph referred to was marked "Defendants' Exhibit No. 4 for identification.")

224—173

By Mr. MILLER:

Q. How much tonnage went into this bridge?

A. 149,000 tons of fabricated structural work.

Q. 149,000 tons? This was a job done by the American Bridge Company?

A. That is correct.

Q. Do you know that that is more than the Consolidated Steel Company or whether it is more than the Consolidated Steel Company fabricated in the whole five years prior to the prewar period?

Mr. WRIGHT. If the Court please, we have figures in evidence as to what they fabricated. I suppose whether or not it is more or not is something that is determinable just by a comparison of those figures with whatever he says was in this bridge. I don't see the point of getting the witness's testimony on a matter of computation.

Mr. MILLER. I withdraw the question, but I call your Honor's attention to the fact that the figures either show or will show that during the whole five-year period from 1937 to 1941 the Consolidated Steel Company, if my relative powers of deduction are correct, fabricated about half as much material as went into that bridge.

The COURT. That would make the picture admissible.

Mr. MILLER. I would think it might.

The COURT. It is nearer to it than it was before 224—175 applied to them.

Q. So you are starting now with the type that requires the very best possible engineering skill, ability, and facility to do the work?

A. Yes, sir. It is generally conceded that railroad bridges require the most fabricating ability and experience to produce properly. They have special requirements, special specifications, and the railroads themselves have very strict inspection requirements on the fabrication in the shop.

Q. Now, is there anything particular about the business the way it is conducted with the way the material is shipped which enables you to do business at a distance?

A. Yes; there certainly is. The railroads haul the material insofar as possible over their own lines. That is to say, they take delivery of the material at our plant or the nearest junction point and haul the material with their own equipment over their own lines. We understand they have special rates set up for doing that which are considerably lower than the standard commercial rates.

Q. As a matter of fact, does the American Bridge Company fabricate and erect railroad bridges all over the country?

A. All over the country.

The COURT. We will take a five-minute recess at this point.

(At this point a brief recess was taken.)

224—176

By Mr. MILLER:

Q. Well, you had one type or class of fabrication. Would you say that in that class the American Bridge Company was highly competitive throughout the country?

A. I would, on account of the special requirements.

Mr. WRIGHT. What class does this refer to?

Mr. MILLER. Railroad and heavy-duty trestle.

Q. Now we will go to highways. That would be the next logical group to railroads. Is there any difference in highway bridges which result in differences in competitive conditions?

A. Yes; there is.

Q. Will you explain that?

A. The ordinary, small, light highway bridge under 150 tons is of very simple construction. It is very frequently nothing more than a few beams fitted and spaced together. The fabrication is simple. Their price is correspondingly low. It is sold to local highway contractors very frequently, and it is something in which the Bridge Company has never had any success in except adjacent to its plants.

Q. Are there transportation reasons for that also?

A. Yes. When we go far afield, the transportation mounts up.

Q. And that is relative to the cost?

A. Relative to the cost of the bridge. Since it is a low cost product the transportation costs bulk very largely  
224—177 in the selling price and in the competitive situation.

Q. What about the local fabricator and his advantages?

A. The local fabricator can fabricate it economically. He usually has a freight advantage over the Bridge Companies. When I say a freight advantage, the cost of his material plus his freight to site is less than ours, and since it is such a large proportion of his total cost it is more than we can overcome.

Q. What about the heavy highway bridges? His Honor has seen a photograph of one. Are those comparable to the railroad?

A. They are much more comparable to railroad bridge construction; that is to say, they are made of heavy sections. They are comparatively long span. Very often they may be lift or bascule type bridges involving heavy machine work. They are made to more careful specifications and requirements than the ordinary small highway bridge. For the big highway bridge, very often a consulting engineer is employed who writes a complete set of specifications and requirements.

Mr. MILLER. I have some photographs here, your Honor, which I think are enlightening, but my adversary is so technical that I don't know whether it is worth while to waste time. If he doesn't

want to look at photographs, as far as I am concerned, he need not, and I don't think I will take time with them.

224—178 The COURT. Is there an offer and an objection?

Q. I show you some photographs. Are these photographs of different types of railroad construction?

A. Yes; those are railroad bridges all within the area we are speaking of.

Mr. MILLER. Will you give counsel a copy and see if he wants to object?

Mr. WRIGHT. We object to them as irrelevant. I see no point of cluttering up the record with pictures. It seems to me we will have enough to study in the way of figures, which have some relevancy in the case.

Mr. MILLER. I offer them merely for the purposes of illustration.

The COURT. I overrule the objection.

Q. What is this that I show you?

A. This is the Pit River railroad bridge, a heavy, long, high railroad span.

Mr. MILLER. I offer that in evidence.

(Photograph of the Pit River railroad bridge was received in evidence and marked "Defendants' Exhibit No. 5.")

Q. What is that?

A. That is a lift span, railroad lift span, over the San Joaquin River.

Mr. MILLER. I offer that in evidence.

(Photograph of a railroad lift span over the San Joaquin River was received in evidence and marked "Defendants' Exhibit 6.")

Q. And what is this?

A. That is a bascule span at Beaumont, Texas, also for railroad work.

Mr. MILLER. I offer that in evidence.

(A photograph of a bascule span at Beaumont, Texas, was received in evidence and marked "Defendants' Exhibit 7.")

Q. And this?

A. This is a large overhead crane runway for the Navy. That has many of the features of a railroad bridge, and therefore is included under this general classification. It carries heavy wheels and loads.

Mr. MILLER. I offer that in evidence.

(Photograph of large overhead crane runway was received in evidence and marked "Defendants' Exhibit 8.")

Q. These are pictures of actual structures that you have fabricated and erected?

A. That is correct.

Q. And what is that? What does it show in particular?

A. That shows a large and heavy plate girder used in connection with the Pit River Bridge. It shows the dimensions and weight of the material which must be handled on these large railroad bridges.

Q. Then you, in connection with structural fabrication, do have occasion also to fabricate some plates?

A. Yes, sir; plates are used for the webs of plate girders, for connecting plates, gussets, and similar products built by a structural fabricator. We also occasionally may build some hoppers or bins or stacks.

Q. Well, that is getting off the line we are talking about.

Mr. MILLER. I offer that in evidence.

(Photograph of a large and heavy plate girder used on Pit River Bridge was received in evidence and marked "Defendants' Exhibit 9.")

Q. You were able to fabricate those heavy plates shown in the photographs?

A. That is right, we did.

Q. Does that mean that you could engage generally in the plate fabrication business?

A. No, sir.

Q. Why not?

A. We have not got the plate forming and rolling and fitting capacity that would be necessary. That, in effect, is ordinary structural work except that we use a plate instead of an H-beam.

Q. What is your next kind or group?

A. Our next would be, I think, the ordinary run of industrial buildings.

224-181 Q. What about them?

A. Well, they form the backbone of any local fabricator's business. They are assembling buildings, one and two stories, which involves fairly simple sections, light trusses. They do run into considerable tonnage, but it is comparatively low-cost work and again the freight becomes a very important item.

Q. Is this in the class of the small highway bridges?

A. It is as regards competitive conditions.

Q. Is the photograph shown you an illustration of the type of industrial building you are now talking about?

A. That is one of the general types. It is rather heavier than the ordinary run.

Q. Is that the type which the local fabricator is able to fabricate and erect?

A. Yes; he can do that.

Q. And is that the type that uses standard structural shapes?

A. Yes.

Q. Not those that have to be specially designed for the job?

A. Not wide-fan shapes; just standard structural shapes.

Q. It is the type of work generally done by the smaller fabricators?

A. That is correct.

224—182 Mr. MILLER. I will offer that photograph in evidence. (Photograph illustrating a particular type of industrial building was received in evidence and marked "Defendants' Exhibit 10.")

Mr. WRIGHT. No objection. If we are going to have pictures, we may as well have a complete set.

Mr. MILLER. I think so.

Q. Now, you have spoken of the industrial buildings. You said it is comparable to the light highway bridges in regard to market conditions. Does the relative cost of transportation to the cost of the project and the other factors that you have mentioned affect your ability to compete at a distance from your mills?

A. They do very much.

Q. And enables the local fabricator to go after that business?

A. That is right.

Q. You said the small bridges was his bread and butter. Would you include this?

A. Small buildings and bridges. That is his regular line of work.

Q. What about the heavier class of buildings?

A. When you get to heavy, multistory tier buildings, that is, skyscraper buildings—

224—183 Q. I show you a photograph. Is this an illustration of what you mean by tier building?

A. That is right. That is one we built.

Q. Where?

A. Louisiana. New Orleans Federal Building.

Mr. MILLER. I offer this in evidence merely for the purpose of illustration.

(Photograph of a tier building was received in evidence and marked "Defendants' Exhibit 11.")

Q. Go ahead.

A. Those multistory buildings involve very heavy column sections which must be usually drilled instead of punched. The ends must be finished. They require considerable shop work and heavy equipment to handle them. In addition, they are made from sections, that is, rolled-steel sections, which are only rolled at three locations in the country.

Q. Those are what you call wide-flange beams?

A. Wide-flange beams.

Q. Where are they rolled?

A. Gary, Indiana; Homestead, Pennsylvania; and Bethlehem, Pennsylvania.

Q. Then, I take it, that the Bethlehem and the U. S. Steel are the only producers of rolled-steel products that produce wide-flange beams?

A. That is correct.

224—184 Q. Do you happen to know whether that is a patented product or what?

A. It was, originally.

Q. Have the patents run out?

A. I believe the patents have expired.

Q. Now, what is the importance of having your structural plant to fabricate such structures located in relation to the manufacture of the shape, the wide flange beams? Is it important to have them close together?

A. Well, it is, because if any question of backhaul is involved; that is, if these beams are shipped out in the most economical way, perhaps, to the Pacific Coast by water and there is any large backhaul involved—

Q. You mean from the place of arrival at the fabricating plant in the West to the point of delivery or erection?

A. That is right.

Q. Go ahead.

A. Then the freight disadvantage is greatly reduced or perhaps eliminated and we can compete both from the point of view of reduction of freight disadvantage and also from the point of view that we have central shops which are fully equipped for this type of heavy work.

Q. But if the backhaul, as you call it, meaning from the fabricating mill to the point of erection is of consequence, you are at a disadvantage?

224—185 A. We are at a disadvantage because this material eventually is usually delivered by truck right to the sidewalk, and a local fabricator, provided he has the proper facilities, can beat us competitively.

Q. Well, I noticed, for example, among your first class here of the large fabricators, the Harris Structural Steel Company, which you said confined itself largely to the metropolitan area in the East. I didn't go West at all.

A. That is correct, sir.

Q. A fair-sized fabricator in the West able to fabricate this kind of work anywhere near its plant, how would its advantage and yours compare?

A. Seeing that the material has to come from the East, in any case our freight disadvantage by shipping from plants of the American Bridge Company would not be very large, so that a

medium sized fabricator with moderately good equipment operating in his own metropolitan area could beat us competitively.

Q. Well, those are the class of buildings you call tier buildings?

A. That is correct.

224-186 Q. Go to the next kind or class of fabrication.

A. The next we would call powerhouses, and they have many of the characteristics of tier buildings.

Q. Why?

A. They are heavy buildings carrying heavy equipment. They invariably use the same wide flange sections for columns and beams. Therefore the same circumstances govern.

Q. Well, not to take too much time on each one now, as it seems time is passing, what is the next classification?

A. The next classification would be work for irrigation and water control work in the West.

Q. Gates?

A. Gates, crest gates, regulating gates, and similar structures.

Q. Do you regard that as a special kind and type of fabrication?

A. It certainly is. Many of the regular fabricators are not in that business at all. Bethlehem, for instance, shows no interest in it.

Q. Do you know how Bethlehem in its proportion of the business of the country compares with yours?

A. Over-all total business?

Q. Yes.

A. Just about the same.

Q. And that class of business it does not even touch?

224-187 A. It does not even touch.

Q. I am surprised to hear that.

A. That business is quite complicated and many of the people in it are more of the nature of machine shop people.

Q. Are there some people in that business who are not in the class of fabricators?

A. Oh, yes; certainly.

Q. But the Bridge Company does do a good deal of that kind of work?

A. We have the heavy machine equipment required and we have the experience that is needed, and in the past we have had the assistance of land-grant rates in getting our material out there.

Q. Just tell his Honor briefly how that works.

A. Well, land-grant rates were established by the railroads as special rates for the hauling of Government materials, and that was done in return for the assistance granted the transcontinental railroads when they were built. Large tracts of land were granted to the railroads to assist them in their building work, and in re-

turn they granted special rates to the Government for the hauling of its material.

Q. So those rates only apply to Government work?

A. That is right.

Q. And is this particular class of business most all of that type or character?

224-188 A. Practically all. Those rates, incidentally, have now been abolished.

Q. When were they abolished, by the way?

A. The last ones were abolished in October 1946.

Q. Then you are going to lose your advantage there?

A. We have lost it already.

Q. Well, the next type?

A. The next type would be specialties that we manufacture. In the course of our business over a period of years we have manufactured many specialties—gone into the manufacture of many specialties such as electric furnaces, railroad turntables, and then we make a large number of standard fittings for bridges, standard pins.

Q. When you speak of specialties you don't mean they are specialties of the Bridge Company that nobody else can make them?

A. No.

Q. Other people can make them?

A. Other people can make them. They are special in the sense that they are perhaps a little foreign to our regular line of business, and we therefore assign special men to handle their design and sale.

Q. The Bridge Company does make a specialty of that class of business, and as it is a different type of business you include it in your list so it will be in the total of your  
224-189 fabricating business?

A. That is right. We make another class of specialty which is transmission towers, which is a product we have manufactured since the very early days, and there is a considerable sale of them in the Western states, so we thought it would be well to separate them and consider them by themselves.

Q. And that is a field in which you have specialized, isn't it?

A. Yes, sir.

Q. You claim to be pretty good at it?

A. Well, I used to think I was.

Q. At any rate, I understand that the Bridge Company, occasionally loaned you to its competitors to tell them how to do it; is that so?

A. Well, I have been loaned to companies to assist them with transmission tower work, yes.

Q. Were you ever loaned to the Consolidated Bridge Company?

A. Yes, sir; I was loaned to them in 1933 for the main transmission lines going out to Boulder Dam.

Q. To help them in designing and erecting for a particular job?

A. That is correct.

Q. You were just loaned to the Consolidated?

A. I was just loaned to them.

224—190 Q. Had they taken the job away from the Bridge Company?

A. No, sir. The transmission towers are manufactured, of course, from steel angles in the larger part which are rolled on the Pacific Coast, rolled in Southern California. They require galvanizing, but there is galvanizing equipment in Southern California. Our manager of our department at that time had decided that we could not compete in the sale of that product in Southern California due to the advantages they had through the supply of local material and the local facilities for galvanizing, so seeing that—

Q. So you had not actually bid on that job, then?

A. No.

Q. Let me ask you right there about the galvanizing. Do you have plants specially devised for these towers?

A. We do. We have one at Pittsburgh. Bethlehem has one at South San Francisco and also at Leetsdale.

Q. And those are both in California?

A. No; Leetsdale is in Pennsylvania.

Q. On this particular occasion Consolidated had taken this contract?

A. No; I was loaned to them to assist them in the design so they could take the contract.

Q. Before they actually bid?

A. That is right. That was the only way—

Q. Does the Bridge Company help out its competitors  
224—191 in any way?

A. Occasionally, because in that case the Bridge Company itself would not have been competitive. Bethlehem already having a plant there and using the local steel produced there was very highly competitive, so it appeared to us the best thing to do would be to assist a customer that at least used some of our steel.

Q. I was looking for the reason. That was because the steel-producing company, the subsidiaries that do rolled steel products, would be able to sell the plain material to the company having the job?

A. That is right. If we could not sell the whole tower we might as well sell the plain material.

Q. What is this?

A. That is a tower with a substation in the background at Bonneville Power.

Mr. MILLER. Just for the record I offer this in evidence.

(The photograph of the tower referred to was received in evidence and marked "Defendants' Exhibit No. 12.")

Q. You have now named all except a couple of groups of miscellaneous character.

A. That is right.

Q. Is it worthwhile to take the time to say anything about them?

224—192 A. I don't think so, sir. One group is merely structures which are not specifically buildings or bridges. They are supports for rails, supports for structural steel, supports for cracking towers and the like; and the last classification is just simply repairs and maintenance.

Q. There are going to be figures submitted here of the total sales of the Bridge Company, and those two groups of miscellaneous things are each included in this list?

A. That is right.

Q. So they are part of the total?

A. They pretty near make the total complete.

Q. Do your records disclose all of the jobs that the Bridge Company has bid on, those that it got and the people that successfully bid against them?

A. We have those records. Occasionally we don't know who the successful bidder was, but in the majority of cases we do.

Q. So far as you were able to find out, that has been made a matter of record?

A. Yes; we always have.

Q. And have you caused tables to be made up under your supervision and direction showing in each for the ten-year period which the Government has selected, 1937 to 1946, inclusive—we take their period, although we say the war period should not be

224—193 included—and have you made up a table or caused one to be made up under your supervision showing the number of bids in each State, the tons bid on, the number of awards that you received and the amount of the tonnage on the awards which you received?

A. Yes, sir; we have.

Q. I show you one for the first classification, "Railroad Bridges and Heavy Duty Trestles." Was that made up under your direction and are you prepared to vouch for its accuracy?

A. Yes, I am.

Mr. MILLER. I offer it in evidence.

Mr. WRIGHT. Are these copies of the tables that were furnished to us before? They seem to be somewhat different in form. I don't know whether these represent different figures.

Mr. MILLER. I haven't had much to do with the figures, but we have given you everything we had. You may find these figures in a little different form, but the data you have had.

Mr. WRIGHT. We were given mimeographed tables which had data of this character, but it was in different form. I just wondered whether there were supposed to be any changes in amounts.

Mr. MILLER. I can't tell you.

Mr. WRIGHT. Or whether it was just a difference in form.

Mr. MERRILL. It is just a difference in form.

224—194 Mr. WRIGHT. The arrangement under which we advised counsel at the time these things were offered was we would not make objection because the original records on which they were based, being records of the company, were not available in court. We did, however, say that we wanted the work sheets.

By Mr. MILLER:

Q. Have you got your work sheets here?

A. Yes, we have them.

Mr. MERRILL. There is a very great volume of them.

Mr. WRIGHT. I understood they would be made available.

Mr. MERRILL. Yes, sir.

By Mr. MILLER:

Q. You have your work sheets all here?

A. They are over in the hotel, sir.

Q. And counsel can have them any time he wants them?

A. Yes, sir.

The COURT. Is it satisfactory if they are made available to you at the recess?

Mr. WRIGHT. Yes. I don't know how much time it will take to examine them, but there is no examination that we would have on these tables until after we look at the work sheets. I think the same is true of that table you first put in there of your analysis of bids under Defendants' Exhibit No. 1.

224—195 Mr. MILLER. Exhibit 1 is nothing but a list of the names of the fabricators, and I put it in to save time so that he would not have to state each one.

Mr. WRIGHT. Yes. I don't know how much time it will take which I presume will show why you have stars on those as to the particular nature of those competitive bids.

Mr. MILLER. Oh, yes; that is exactly right.

(The paper entitled "Railroad Bridges and Heavy Duty Tres-

ties" was received in evidence and marked "Defendants' Exhibit No. 13.")

Mr. MILLER. I will do the same thing for each class that he has described.

By Mr. MILLER:

Q. I show you another exhibit. Is that the class 2 of light highway bridges?

A. Yes.

Q. And are you able to speak of the way they were prepared?

A. I am.

Q. And the work sheets that you will deliver to Government counsel will show just how they were made up?

A. Yes.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Light Weight Highway Bridges" was received in evidence and marked "Defendants' Exhibit No. 14.")

224—196 Q. Does the list I now show you include the list of heavy highway bridges?

A. Yes, that was also made up by us from data available.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Heavy Highway Bridges" was received in evidence and marked "Defendants' Exhibit No. 15.")

Q. This list includes all industrial buildings, excluding tier buildings?

A. That is right. That was made up in the same way.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Buildings (Except Tier Buildings) and Buildings for Power Houses" was received in evidence and marked "Defendants' Exhibit No. 16.")

Q. This list includes the tier buildings and is the list of the tier buildings?

A. That is correct, sir.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Tier Buildings" was received in evidence and marked "Defendants' Exhibit No. 17.")

Q. And this which I now show you is the list of powerhouses, buildings for powerhouses?

A. That is correct.

Q. The bids and sales?

A. Yes.

Mr. MILLER. I offer this in evidence.

224—197 (The paper entitled "Buildings for Powerhouses" was received in evidence and marked "Defendants' Exhibit No. 18.")

Q. Is this the list of gates for irrigation and hydraulic power projects?

A. Yes, sir; that is so.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Gates, etc., for Irrigation and Hydraulic Power Projects" was received in evidence and marked "Defendants' Exhibit No. 19.")

Q. What you have said about the first applies to all these as I show them to you?

A. That is right.

Q. Without repeating it?

A. Yes, sir.

Q. And this is what you call the "specialties" of the American Bridge Company?

A. Yes, sir; that is, sir.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Specialties of American Bridge Co. and Virginia Bridge Co." was received in evidence and marked "Defendants' Exhibit No. 20.")

Q. And this is a list of towers and electric substations?

A. That is correct.

Mr. MILLER. I offer this in evidence.

224—198 (The paper entitled "Towers and Electric Substations" was received in evidence and marked "Defendants' Exhibit No. 21.")

Q. And this is a list of what you call "Miscellaneous Steel Work" of which you illustrated and gave a few examples in your testimony?

A. That is right.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Miscellaneous Steel Work" was received in evidence and marked "Defendants' Exhibit No. 22.")

Q. And this is the last one. It is a list of other sorts of fabricated materials?

A. That is correct.

Q. Will you just give the Court some idea generally?

A. This is miscellaneous fabricated materials for use in fabricated structural steel products. In other words, it is just repairs to bridges, its ladders and platforms, and that class of material, just put in to make the total a hundred percent.

Mr. MILLER. I offer this in evidence.

(The paper entitled "Miscellaneous Fabricated Materials for Use in Fabricated Structural Steel Products" was received in evidence and marked "Defendants' Exhibit No. 23.")

Q. Now, these lists show with respect to the different

224—199 classes of materials the tonnage that you bid on and the awards which you received in each of the eleven states from the years 1937 to 1946, inclusive, do they not?

A. That is correct.

Q: I want to ask you some questions specifically in relation to these lists. Take the first list, Defendants' Exhibit 13. Now, I am going to ask you to go through state by state and tell his Honor and explain each one of those items. Now, we are dealing with railroad bridges and heavy-duty trestles, and tell his Honor who, so far as you know, your competitors were, the contracts that you lost, and to whom.

Mr. WRIGHT. If the Court please, I don't understand the relevance of this. I suppose there is no dispute about the fact that other people have competed against the American Bridge Company in the past and have successfully competed with them. I just don't understand what the purpose of this elaboration is. We are not concerned with anything, it seems to me, that is at issue in the lawsuit.

The COURT. Isn't this true, Mr. Wright: You were talking a few minutes ago about the competition between Consolidated and Columbia—

Mr. WRIGHT. Yes, Consolidated and U. S. Steel.

The COURT. Consolidated and U. S. Steel. Of course, that is only one element of the picture in general competition, is it not, because, of course, in every purchase of one company 224—200 by another that particular competition is eliminated and is bound to be.

Mr. WRIGHT. Yes.

The COURT. I may be entirely incorrect, but except as that figures in the over-all picture of general competition, it is only an element in the general picture of over-all competition.

Mr. WRIGHT. I am merely suggesting, your Honor, that in any appraisal of the over-all picture of competition you can start with the assumption that there are other people who have competed with the Steel Corporation in this kind of work in the past and there will be people who will compete with them in the future. That, it seems to me, is a fact which assuming it is relevant it is unnecessary to take proof upon. We are spending a great deal of time, it seems to me, in making judicial proof of an obvious fact which we are not disputing. That is all that I am pointing out.

The COURT. I see. It is not the materiality so much as the advisability.

Mr. WRIGHT. I would suppose on the question of the total competitive picture what your Honor would be interested in would be

figures which are available as to the actual extent of this market which was sold by these various companies.

The COURT. Of course, I might be interested not only in the gross figure of 100,000 tons, but if ten companies made 224—201 up 10,000 tons of competition each—

Mr. WRIGHT. Yes, I suppose you would want to know that, but I am really pointing out all of this stuff that is being handed to you doesn't throw any light on those issues at all. All we have had here is material indicating that under certain circumstances certain companies have successfully competed with the Steel Corporation, a fact about which there can't possibly be any dispute, and that you are not being given any picture of the over-all competition in the market at all by the evidence that is being offered.

The COURT. In line with your suggestion I will ask Governor Miller not to ask any questions unless in his judgment they are material to his case.

Mr. WRIGHT. Well, I assume they are. I am merely pointing out—

The COURT. They are material to his case to be admissible.

Mr. WRIGHT. Even assuming the materiality, he is embarking upon proof of something that we admit. It is just a waste of time.

224—202 Mr. MILLER. If counsel is prepared to admit that there is very vigorous competition now and will be after this transaction is consummated, which is entirely ample to protect the public interest, if counsel will make that admission I will pause right here; otherwise, I am going to show your Honor just exactly what the competition is.

The COURT. I think that would be your duty. I think you will get no such admission.

Mr. MILLER. I didn't expect to, although he went almost halfway.

Q. Now, there are a lot of details involved in this subject that I am now going to ask you about. Have you made up a memorandum containing many figures?

A. Yes, sir.

Q. I don't suppose you can carry them all in your mind.

A. I am afraid I can't.

Q. You have a memorandum. I am not going to ask you to read it, but you may have to refer to that for some of the details.

Mr. MILLER. Will you make counsel available one?

Mr. WRIGHT. Maybe we can just have the memorandum go in as an exhibit.

Mr. MILLER. It is a bulky thing. I don't think that is the way to put evidence in. I think it is better to tell it to your

221—203 Honor so you won't have the labor of reading it, and something may arise as we go along that may be illuminated.

Q. Then, if it is necessary to refresh your mind as to the exact figures and so forth, I will ask you to refer to that memorandum.

MR. MILLER. You can have it marked for identification if you want, counsel.

MR. WRIGHT. It doesn't make any difference.

Q. I am going to ask you to take each state separately. I am only asking now about the first classification of highway bridges and heavy trestles, and state to us the exact facts as to whom you lost business to, the exact facts as to the competition and every relevant fact to the way that business was handled. Do you understand me?

A. Yes, sir.

Q. Begin with Arizona.

A. These cover railroad bridges and heavy-duty trestles which are of the same general construction. In the 11 states, in the 10 years—

Q. I am talking about Arizona.

A. Just Arizona?

Q. What were you going to say about the 11 states?

A. I was going to say we sold a total of 72,000.

Q. And bid on how many?

A. Bid on 98,000.

224—204 Q. That would indicate that you were very highly competitive yourself?

A. That is right, and we are competitive by reason, first, of the fact that we have specialized in this work; and secondly, that the railroads use special freight rates for the transportation of their own materials.

Q. I take it, or is it the fact, does this list involve all of that character of work that was constructed in that state during the period or only such as you bid on?

A. Just such as we bid on.

Q. Do you know how much there was outside of that?

A. No, sir; we don't.

Q. Go ahead.

A. In Arizona we bid on 13,596 tons and were awarded 7,412. The principal award was a large bridge at Topock, Arizona, for the Santa Fe, 6,774. That was fabricated by American Bridge Company, transported by the railroad and erected by American Bridge Company.

Q. To whom did you lose the tonnage where you didn't succeed in getting the contract?

A. We lost that to those regularly engaged—

Q. I am asking you for the names.

A. I would have to get the list.

Mr. MILLER. Give it to him.

Q. My assistant has just handed you something that  
224—205 looks to me like a work sheet. What is it?

A. This is a work sheet which we used in preparing these figures.

Mr. MILLER. Give counsel one of them.

The COURT. We will take a recess until 2:15.

(At this point a recess was taken until 2:15 o'clock p. m. the same day.)

224—206 Two-fifteen o'clock p. m., the same day.  
Present: As before noted.

NORMAN B. ORBARD (resumed).

Direct examination (continued) by Mr. MILLER:

Q. At the recess we had started to go through these different types of fabrication in each one of the states class by class for the 10-year period 1937 to 1946, and you had stated the total of that business which the Bridge companies took, that includes both the Bridge Companies, the total on which they bid, the total amount that was awarded to them and the particular project or projects that you secured.

Now, I am going to ask you—I am going to try to shorten this, your Honor—I am going to ask you to go through the list by each class of product by States and state to his Honor the total for all these states that you bid on, the total that you received and to whom you lost the part that you bid on and did not receive. Do you understand me?

A. Yes, sir.

Q. Here is Exhibit 13. You will have to refer to what we have called work sheets to get some of this material.

224—207 Mr. WRIGHT. If the Court please, I have a suggestion, I think, that will save time, some time. If this evidence is to be received at all, then we would want these work sheets, which he is now summarizing, and some of the data which he is repeating, in evidence themselves.

Now, with those in evidence it seems to me we are wasting time having him merely repeat or recite what would be in these figures. We are perfectly agreeable that these sheets themselves that contain the statements that he is about to make go into evidence themselves.

The COURT. If they should go into evidence, certainly they would be admissible in evidence as a summarization from the work sheets, would they not?

Mr. WRIGHT. I am suggesting if these are put in it will be unnecessary for them to repeat from the witness stand such facts as are stated here which, I take it, was what he was about to do. It seems to me it would save time to have the sheets go in. Then you have those statements. Then he can confine his testimony simply to summarization, which would not involve repetition.

The COURT. Unless I am compelled to, I don't propose to go through the work sheets.

Mr. MILLER. It would take you hours to figure out what he can state in a few words. I am agreeable to their being put in evidence as they are, but I do want him to make  
224—208 the summary briefly so that your Honor can see what it is.

Mr. WRIGHT. To the extent that he makes a summary. Perhaps I misunderstood the question. What was the question?

(Question read by stenographer as follows:)

"Question. At the recess we had started to go through these different types of fabrication in each one of the states class by class for the 10-year period 1937 to 1946, and you had stated the total of that business which the Bridge Companies took, that includes both the Bridge Companies, the total on which they bid, the total amount that was awarded to them and the particular project or projects that you secured.

Now, I am going to ask you—I am going to try to shorten this, your Honor—I am going to ask you to go through the list by each class of product by States and state to his Honor the total for all these states that you bid on, the total that you received and to whom you lost the part that you bid on and did not receive. Do you understand me?"

Mr. WRIGHT. The totals, I take it, are summaries, but when it comes to a statement to whom the bids were lost, those companies are named in here.

Mr. MILLER. It would be quite a job for his Honor to dig them out. It would take less time than our discussion for the witness to state it.

Mr. WRIGHT. I have said all I care to say on it.

224—209 Mr. MILLER. Do you want those documents in evidence?

Mr. WRIGHT. Yes; we do.

Mr. MILLER. Have them marked in evidence, then.

224—210 Mr. MILLER. Why can't they be treated as one exhibit?

Mr. WRIGHT. Well, there is one for each state.

(The work sheet for the State of Arizona was received in evidence and marked "Defendants' Exhibit No. 24.")

(The work sheet for the State of California was received in evidence and marked "Defendants' Exhibit No. 25.")

(The work sheet for the State of Idaho was received in evidence and marked "Defendants' Exhibit No. 26.")

(The work sheet for the State of Louisiana was received in evidence and marked "Defendants' Exhibit No. 27.")

(The work sheet for the State of Montana was received in evidence and marked "Defendants' Exhibit No. 28.")

(The work sheet for the State of Nevada was received in evidence and marked "Defendants' Exhibit No. 29.")

(The work sheet for the State of New Mexico was received in evidence and marked "Defendants' Exhibit No. 30.")

(The work sheet for the State of Oregon was received in evidence and marked "Defendants' Exhibit No. 31.")

(The work sheet for the State of Texas was received in evidence and marked "Defendants' Exhibit No. 32.")

(The work sheet for the State of Utah was received in evidence and marked "Defendants' Exhibit No. 33.")

(The work sheet for the State of Washington was received in evidence and marked "Defendants' Exhibit No. 34.")

224—211 By Mr. Miller:

Q. Now, you understand what I am asking?

A. Yes, sir.

Q. Will you go on in your own way and go through the complete list, and I will sit, if I may, while you are testifying.

A. This is Class 1, Heavy Railroad Bridges and Heavy Duty Trestles, which are of the same nature. In Arizona we bid on 13,596 tons and received 7,412 tons. The companies that successfully competed against us were Darbyshire-Harvie Iron & Machine Company.

Q. Tell us where they are located.

A. I could not recall. It is a small company. I haven't even got them on my list.

Q. All right:

A. Bethlehem Steel Company, Gage Structural Steel Company of Chicago, Kansas City Structural Steel Company, Kansas City Bridge Company, and one, Consolidated Steel Corporation.

Q. What was that?

A. That was a construction trestle at Kingman, Arizona. That is not a railroad bridge proper, but was of heavy construction and therefore we put it in this classification.

Q. All right, take the next.

A. In California in the same classification we bid on 224—212 55,125 tons and received 45,940 tons. Successful competition was Bethlehem Steel Company, Julson Pacific

Company, San Francisco. One, Consolidated Steel Corporation. That also was a construction trestle for Friant's Dam.

Others were Mississippi Valley Structural Steel Company, Milwaukee Bridge Company, and J. T. Ryerson & Sons, Chicago.

Q. While you are on the State of California will you state the project which the Bridge Company secured and anything pertinent in reference to those particular projects?

A. Yes; certainly. The Bridge Company secured 45,000 tons, but of that 17,302 tons was in one very big railroad bridge for the Bureau of Reclamation in connection with Shasta Dam. Also in connection with that Shasta Dam project were three other bridges, 5,875 tons, 1,000 tons, and 1,729 tons. There were also awards to the U. S. Engineers of 356 tons, 937 tons, and 1,036 tons.

Q. Of that tonnage that you have mentioned was it all shipped on land-grant rates?

A. All of that was shipped on land-grant rates, as also was a heavy crane runway for the Navy, of which you saw a photograph, of 6,928 tons.

Q. What was the total of the business shipped on land-grant rates?

A. In addition to the tonnages I have said, there 224—213 were two small jobs of 72 tons and 26 tons also shipped on land-grant rates, so that everything except 2,080 tons which were sold f. o. b. fabricating plants to the railroads, who likewise shipped on a reduced rate, and 1,399 tons out of the entire total for California was sold for delivery at distances at commercial freight rates.

Q. Go on and take the next state.

A. In Idaho we only bid on 884 tons and secured 738. The competition was Bethlehem Steel Company, Minneapolis, Moline Power Implement Company, Omaha Steel Works.

Q. Go right along.

A. The work which we secured—

Q. You need not take the time.

A. They were very small amounts.

Q. Go on to the next.

A. In Louisiana we bid on 2,032 tons and received 1,873. Successful competitors were the Missouri Bridge & Iron Company, Stupp Bros. Bridge & Iron Company, and Jones & McLaughlin Steel Corporation.

Montana did not have a large tonnage. We bid on 2,032 tons and secured 1,873. Successful competitors were Worden-Allen Company, Wisconsin Bridge & Iron Company, Kansas City Structural Steel Company, Clinton Bridge Works, and Bethlehem Steel Company.

In Nevada there was no work.

224—214 A. In New Mexico we bid on 1,307 tons and received 1,307 tons, so that we cannot say we had any successful competitors on that small tonnage.

In Oregon, in the period, we only bid on 830 tons and received 310 tons. The competition was unknown.

Q. By that you mean the successful competition?

A. The successful competition we could not determine.

In Texas we bid on 11,902 tons and secured 4,360 tons. The successful competition was Wisconsin Bridge & Iron Company, Mosher Steel Company, Missouri Valley Bridge & Iron Company, Stupp Brothers Bridge & Iron Company, Bethlehem Steel Company and Joseph T. Ryerson & Sons.

Q. That is a subsidiary of Inland Steel Company?

A. That is a subsidiary of Inland Steel Company. The Mosher Steel Company, I think I already got that.

In Utah we bid on 1,844 tons and received 1,224. The successful competitors were Steel Engineers, Inc., Bethlehem Steel Corporation, J. & L. Steel Corporation—

Q. That is a subsidiary of the J. & L. Steel Company?

A. That is right; Minneapolis-Moline Power Implement Company, Paxton-Vierling Iron Works.

In the State of Washington we bid on 8,685 tons and secured 7,459 tons. The successful competition was Poole & McGonigle, Pacific Car and Foundry Company, Willamette Iron & Steel Corporation, Worden-Allen Company.

224—215 Of the total bridges we sold in that classification, practically all were sold f. o. b. our plants or nearest junction point for the railroad's own transportation.

The fact of that special transportation rate is of advantage to us along with our specialized knowledge in railroad bridge work is evidenced by the fact that railroad bridge work represents nationally, in that period, 10.5% of our total work. In the 11 states it represented 14.5%, and in the State of California it represented 31.1% of our total work.

In other words, those special transportation rates make railroad bridges one of the few, assist in making railroad bridges, one of the few articles which we can ship into the western states competitively.

The only two jobs that Consolidated competed with us during the entire period were on two construction trestles for dams.

Q. That was during the entire period of 10 years?

A. The entire period of 10 years Consolidated competed successfully with us just twice on work of that character.

Q. Now, take the next type.

A. The next type is light highway bridges, and on that, as we

said previously, we are in a very poor competitive situation. Most of the work is taken by the local fabricators.

221—216 In the whole period we bid in all 11 states on 23,904 tons and only secured 6,794 tons.

Q. Who were your successful competitors?

A. Our successful competitors in—

Q. In each state.

A. In Arizona, Allison Steel Manufacturing Company, Minneapolis-Moline Power Implement, Pittsburgh-Des Moines Steel Company.

In California there were Midwest Steel & Iron Works Company—

Q. Have you given the total?

A. The total secured in Arizona out of our 904 tons bid was zero by us.

Q. You didn't get anything?

A. We didn't get anything. In California we bid on 1,801 tons and secured 442 tons.

Q. Who was the successful bidder?

A. The successful competitors were Midwest Steel & Iron Works Company, Bethlehem Steel Company, J. T. Ryerson & Sons, Consolidated Steel Corporation, Golden Gate Iron Works, Minneapolis-Moline Power Implement Company. That is all for California.

In Idaho we bid on 1,888 tons and secured 1,074 tons. The successful competitors were Omaha Steel Works, Muskogee Iron Works, Provo Foundry & Machine Company,

224—217 Clinton Bridge Works, Bethlehem Steel Company, Stupp Brothers Bridge & Iron Company, Minneapolis-Moline Power Implement Company and Joseph T. Ryerson & Company.

In Louisiana we quoted, in the period, on 217 tons and secured one job.

Q. One ton?

A. No; one job of 45 tons. The competition, only successful competition, was J. & L. Steel Corporation.

In Montana we quoted upon 3,822 tons and sold 1,199 tons. The successful competition was Minneapolis-Moline Power Implement Company, Pittsburgh-Des Moines Steel Company, Bethlehem Steel Company, Midwest Steel & Iron Works, Missouri Valley Bridge & Iron Company, Joseph T. Ryerson & Sons, J. B. Klein Iron & Foundry Company, Stupp Brothers Bridge & Iron Company.

In Nevada we quoted on 257 tons and received 99 tons. The only successful competitor we could trace was Bethlehem Steel Company.

In New Mexico we quoted on 3,674 tons and received 749 tons. The successful competition was Darbyshire-Harvie Iron & Machine Company, Midwest Steel & Iron Works Company, J. B. Klein & Foundry Company, Pittsburgh-Des Moines Steel Company, Missouri Valley Bridge & Iron Company and Stupp Brothers Bridge & Iron Company.

In Oregon we quoted on 796 tons and received one 224—218 job of 93 tons. The successful competition was Poole & McGonigle, Schmitt Steel Company, Northwest Equipment Company, Truscon Steel Company, Pacific Car & Foundry Company—no, I am sorry. Strike those last out.

Q. What last?

A. Poole & McGonigle company, Schmitt Steel Company were the only two; both local concerns.

In Texas during the period we quoted on 5,871 tons and secured 1,266 tons. The successful competition was North Texas Steel Company, Mosher Steel Company, Alamo Iron Works, Peden Iron & Steel Company, Central Texas Iron Works, Austin Brothers, Inc., The J. B. Beard Company, Bethlehem Steel Company, Illinois Steel Bridge Company and Petroleum Iron Works.

Utah, in the 10-year period, we quoted on 1,920 tons and secured 772. The successful competition was Steel Engineers, Inc., Provo Foundry & Machine Company, Bethlehem Steel Company, Minneapolis-Moline Power Implement Company and Kansas City Structural Steel Company.

In Washington we quoted on 2,754 tons and secured 855. The successful competition was Pacific Power & Foundry Company, Union Iron Works and Bethlehem Fabricators.

Q. Is that Bethlehem Steel Company?

A. Bethlehem Fabricators is a separate company located at Bethlehem.

224—219 Q. It is not a subsidiary of the Bethlehem Steel Company?

A. No; it is a fabricating company located at Bethlehem.

Q. All right.

A. The Stupp Brothers Bridge & Iron Company, Bethlehem Steel Company, that is the principal company, and Poole & McGonigle.

Now, reviewing the amount of work secured and the character and location of the plants that secured work from us, it will be self-evident that that is the type of work that is usually done by the local fabricator.

The total tonnage we shipped in during the 10 years, the total tonnage we secured the 10 years, was 6,794 tons, which is an average of under 700 tons a year, which is quite inconsequential.

224—220 Q. Take the next type.

A. On heavy highway bridges in Arizona we bid 1,303 tons, secured 533 tons. The competition was Bethlehem Steel Company. That is all that we could identify, there being so little work there.

In California we bid on 42,586 tons and secured 18,286 tons. The successful competition was Bethlehem Steel Company, Herick Iron Works, Stapp Bros. Bridge & Iron Company, Pacific Iron & Steel Company, Consolidated Steel Corporation, Moore Dry Dock Company, Minneapolis-Moline Power Implement Company, Judson Pacific Company, Golden Gate Iron Works, Kansas City Structural Steel Company.

Q. What were the jobs that Consolidated secured?

A. Consolidated secured one job for the first street grade crossing in Los Angeles, 246 tons, and one other bridge in Southern California, Van Nuys, Southern California.

One moment, here are some more. Two bridges for the State of California, 624 tons and a big one at Marysville, California, 3,921 tons.

The work we secured was almost entirely made up of two large jobs. One was a large lift bridge and two approach spans to that lift bridge. That was secured in 1945.

Q. What was the name of it?

A. That was the Serita Channel Bridge. That is a large lift span, 10,524 tons, together with two approaches on the 224—221 same freeway, 1,351 tons and 1,890 tons.

Q. That is almost in Bethlehem's and Consolidated's back yard, isn't it?

A. Yes, sir. The reason we secured it was, first, that it was a lift bridge involving machinery and complicated work which raised the price to around \$260 a ton, so that the freight differential did not become such a large factor. Also we had the shop facilities available for it at the time and it was a penalty job with a heavy penalty of \$1,000 a day.

Q. That means for every day short of the contract date of delivery you were subjected to a penalty of a thousand dollars?

A. That is right, sir.

Q. What were the general conditions effecting in that industry in 1945 and 1946?

A. Well we had space for it in our shops because at that time we had not got a large amount of bridge work. We have separate areas in our shop devoted to bridge work and building work.

Q. Well, you happened to have the space where you could do the job?

A. That is right.

The other large job we took in California was the Antler Bridge taken in 1940. That was 1,704 tons. That was very

224—222 complicated work in connection with the Shasta Dam improvement. It was highly fabricated due to the fact that the roadway it carried was on a curve both transversely and vertically. Those two bridges took up the principal part of that bridge work in California.

Q. During the ten-year period?

A. During the ten-year period.

Q. Proceed.

A. In Idaho during the ten-year period we bid on 2,571 tons and secured 636. The competition was Minneapolis-Moline Power Implement Company, Bethlehem Steel Corporation, Truscon Steel Company—no, no, pardon me. Just Minneapolis-Moline Power Implement Company and Bethlehem Steel Corporation, that is all. There was not a great deal of work in that state.

In Louisiana during the period we bid on 47,263 tons of this type of work and secured nothing. The competition was Ingalls Iron Works, Bethlehem Steel Company, J. & L. Steel Corporation, Vincennes Steel Corporation, Nashville Bridge Company, Missouri Bridge & Iron Company, and Mt. Vernon Bridge Company.

In Montana during the period we bid on 9,460 tons and secured 1,017 tons. The competition in Montana was Pittsburgh-Des Moines Steel Company, Minneapolis-Moline Power Implement Company, Midwest Steel & Iron Works Company, Bethlehem Steel Company, J. B. Klein Iron & Foundry Company, Missouri Valley Bridge & Iron Company, Midland Structural Steel Company.

224—223 In Nevada during the period we bid on no bridges of that type and secured none, one hundred percent.

In New Mexico we bid on 5,557 tons and secured 1,737 tons. The competition was Des Moines Steel Company, Missouri Valley Bridge & Iron Company, Pittsburgh-Des Moines Steel Company, which is another company. That is all that we know of.

In Oregon we bid on 7,965 tons and secured 427. Successful competition was Northwest Equipment Company, Poole & McGonigle, Truscon Steel Company, Pacific Car & Foundry Company, Willamette Iron & Steel Corporation, Bethlehem Steel Corporation.

In Texas during the period we bid on 52,826 tons and secured 20,324 tons. The successful competition was Mosher Steel Company—

Q. That is—

A. That is the company with Texas plants at Dallas, Houston, Tyler and Shreveport, Louisiana. Central Texas Iron Works, Alamo Iron Works, Bethlehem Steel Company, Austin Bros. Incorporated, North Texas Steel Company, Peden Iron & Steel Company, Pittsburgh-Des Moines Steel Company, North Texas Steel

Company, Capital Steel & Iron Company, Amarillo Iron Works, Darbyshire-Harrie Iron & Machine Company, Austin Bridge Company, Maxwell Steel Company, Fort Worth Structural Steel Company, Pennsylvania Steel Company, and Petroleum Iron Works. That was all the competition in Texas.

In Utah during the period we bid on 545 tons and secured 305 tons. The competition we could identify was Minneapolis-Moline Power Implement Company.

In Washington during the period we bid on 36,066 tons, secured 2,297 tons. The successful competition was Poole & McGonigle, Pacific Car & Foundry Company, Lukens Steel Company, Pittsburgh-Des Moines Steel Company, Northwestern Equipment Company, Bethlehem Steel Company, Isaacson Iron Works, Wilamette Iron & Steel Company, Lakeside Bridge & Steel Company, Clinton Bridge Works, and Pittsburgh-Des Moines Steel Company.

In general that analysis shows that we do get work in North Texas which is within economic shipping range of Virginia Bridge Company's Birmingham and Memphis plants. We also get to—

Q. And apparently Consolidated got nothing in that territory?

A. No; they did not.

Q. Do they have a plant at Orange?

A. Yes, but we did not encounter them in that class of business at all.

Q. Their business is more in the southern part of Texas?

A. That is right, sir. We do not get into the south of Texas, and, incidentally, the South Texas fabricators have low freight rates, low railroad freight rates that are water-impelled rates.

Q. You mean they have to compete with the water?

A. They have to compete with water, so that they can get low through rates through South Texas fabricators to South Texas points, so that the most of our work in Texas is in the northern part of the State.

The only other substantial tonnage was in California and centered around those two large contracts on which we had some of our freight disadvantage wiped out due to their large size and their extreme complication, and the fact that our plants could handle them at the time they came up.

The next classification is Manufacturing Industrial Buildings, which includes all buildings except tier buildings and powerhouses.

In that time we bid upon 469,196 tons and secured 173,873 tons in the eleven States. However, an analysis of that tonnage shows

that a very high proportion of it was sold to the Federal Government for transportation on land-grant rates:

Q. Which have now been abolished?

A. They are now abolished. Abolished the last of them last October.

In California, for instance, we sold 49,728 tons, but of that 40,885 tons was sold to the U. S. Navy and traveled 224—226 on land-grant rates.

Q. What were the competitors to whom you lost business that you bid on?

A. Before we leave that, we might say that of the total tonnage in California only 8,824 tons in the ten years was sold to agencies other than the Federal Government, so that was all that was actually sold on the basis of the commercial freight rates.

The competitive situation in Arizona where we bid on 14,288 tons and secured 282 was that the work was awarded to Kansas City Structural Steel Company and the 4-V Structural Steel Company.

Q. That is a new one.

A. That is a wartime combination of four small structural companies that went together to bid some of the larger work. The rest were unknown in Arizona.

In California during the period the competition or the successful competitors were Schrader Iron Works, Incorporated, Judson Pacific Company, Atlas Scraper & Engineering, Lehigh Structural Steel Company, Bethlehem Steel Company, Palm Iron & Bridge Works, Moore Dry Dock Company, Consolidated Steel Corporation, one job.

Q. One job out of all?

A. That is all. I may come to another one. No; another job in 1944 and another in 1946. A total of three jobs in 224—227 which Consolidated were successful competitors. National Iron Works, Moore Dry Dock Company, Minneapolis-Moline Power Implement Company, Herrick Iron Works, Pacific Steel Company.

Q. You are still on California?

A. Still on California, and the classification of commercial buildings. Judson Pacific Company, Muskogee Iron Works, Kansas City Structural Steel Company, Austin Bros. Incorporated, Pacific Iron & Steel Company, Kansas City Structural Steel Company, Standard Steel Corporation, and Continental Bridge Company.

224—228 In Idaho, during the period, we bid on 9,946 tons and secured 1,019 tons. The successful competition was Minneapolis-Moline Power Implement Company, Truscon Steel Company, Bethlehem Steel Company, Kansas City Structural Steel Company, and Steel Engineers, Inc.

In Louisiana, during the period, we bid on 40,191 tons and secured 18,659 tons. The successful competition was J. & L. Steel Corporation, Bethlehem Steel Corporation, Ingalls Iron Works, Decatur Iron & Steel, Belmont Iron Works, Mosher Steel Company, and Steel Construction Company.

In Montana, during the period, we bid on 4,713 tons and secured 226. The successful competitors were Minneapolis-Moline Power Implement Company, Bethlehem Steel Company, St. Paul Engineering & Manufacturing Company, and Worden-Allen Company.

In Nevada, during that period, we bid on 20,664 tons and secured 15,510.

The bulk of that work was for war work in connection with the basic magnesium war plant which was sold to the Reconstruction Finance Corporation agents and there were several Navy jobs sold in connection with the Navy's developments during the war.

The total of those jobs made up the entire business in Nevada during those years, as far as the Bridge Companies were concerned. There was no normal peacetime work.

224—229 Our competition in that State and in that product was Consolidated Steel at one job, 98 tons; the other competitors were the Bethlehem Steel Company, Pittsburgh-Des Moines Steel Company, Kyle Steel Construction Company, Emisco Derrick & Equipment Company. Here is another one the Consolidated got, 878 tons, for basic Magnesium war plant; the Allison Steel Manufacturing Company and the Kansas City Structural Steel Company.

In other words, Consolidated secured two jobs in that State in competition with us, both in connection with war work.

New Mexico we bid on 7,488 tons and secured 922 tons. The competition which successfully secured work from us is Amarillo Iron Works, Muskogee Iron Works, J. B. Klein Iron & Foundry Company, Denver Steel & Iron Works Company, Bethlehem Steel Company, Tulsa Boiler & Machinery Company, Patterson Steel Company, Panhandle Steel Products Company, and Mosher Steel Company.

In Oregon, during the period, we bid on 17,140 tons and secured 3,862 tons. The successful competition was Vierling Steel works, Willamette Iron & Steel Corporation, Bethlehem Steel Corporation, Poole & McGonigle, Pacific Car & Foundry.

In Texas, during the period, we bid on 98,708 tons and secured 7,044 tons. The successful competition was  
224—230 Mosher Steel Company, Boston Brothers, Inc., Bethlehem Steel Company, Petroleum Iron Works, and Orange Car & Steel.

Q. That is Consolidated?

A. That is the predecessor of the present Consolidated of Texas.

Q. Consolidated acquired the Orange plant when?

A. This contract was let in 1937, and I think Consolidated acquired Orange Car & Steel in 1940.

Other competitors, successful competitors, were Austin Brothers, Inc., J. B. Beaird Company, Darbyshire-Hardie Iron & Machine Company, Murray Company. That is the Murray Gin Company.

Q. That doesn't mean they make gin?

A. No, sir. Consolidated Steel Corporation, one job; Central Texas Iron Works. Here is another job Consolidated; Vierling Steel Works, Decatur Iron & Steel Works, Ingalls Iron Works Company, Superior Structural Steel Company, Kansas City Structural Steel Company; your Consolidated, two small jobs in 1945; Muskogee Iron Works. Those were the successful competitors.

In Utah, during the period, we bid on 73,533 tons and secured 57,995 tons.

Q. Was there anything special about that?

A. There certainly was. The bulk of that work was work for the Geneva Steel Corporation which was constructed 224—231 by the R. F. C.

Q. It was the construction of the Geneva Steel plant, and the U. S. Steel Company or its subsidiaries constructed that plant for the Government?

A. That is right. All of the work in Utah except for 2,463 tons during that 10-year period was for Geneva.

The successful competitors were Midwest Steel & Iron Works Company, Minneapolis-Moline Power Implement Company, International Steel Company, Bethlehem Steel Company, Duffin Iron Company, Kansas City Structural Steel Company, Mississippi Valley Structural Steel Company. That is all we have a record of.

In Washington during the period we bid on 53,365 tons and secured 18,626 tons, most of which was war work.

Q. Shipped on land-grant rates?

A. 5,917 tons were sold to the Navy, the Bureau of Reclamation, and the U. S. Engineers and shipped on land-grant rates. 614 tons were sold to Boeing Aircraft Company, and all of the remaining tonnage went to the Aluminum Company of America for its Vancouver plant, which it built on its own money and therefore could not use land-grant rates.

On the other hand, it was a matter of extreme urgency to get that work up and we got it largely on delivery, the portion we got. Bethlehem got a large portion, too.

The competition throughout the 10 years was Pacific

224—232 Car & Foundry, Structural Steel Company, Milwaukee Bridge Company, Ingalls Iron Works Company, Wisconsin Bridge & Iron Works, Star Iron & Steel Company, Worden-Alten Company, Duffin Iron Company, Isaacson Iron Works, Minneapolis-Moline Power Implement Company, Stupp Brothers Bridge & Iron Company, Pacific Iron & Steel Company, Midwest Steel & Iron Works, Pittsburgh-Des Moines Steel Company, Kansas City Structural Steel Company, and Mississippi Valley Structural Steel Company.

That was the building work during that time.

Q. Take the next one.

A. The next one is tier buildings.

Q. What you have been talking about now has been ordinary industrial building?

A. That is correct. These were all industrial buildings, separate construction, maybe up to two or three stories. This classification I am now speaking of is multi-story tier buildings. There aren't many throughout the West.

Q. Go ahead.

A. Tier buildings during the period, we bid on a total of 47,689 tons and secured 8,475 tons.

Arizona we bid 941 tons and secured none.

Q. Do you know who your competition was?

A. The competition was Kansas City Structural Steel Company.

In California during the period we bid on 17,952 224—233 tons and secured 5,344 tons. Those jobs we got, two were in the northern part and two in the southern part of California.

Q. Los Angeles?

A. Yes; one was taken in 1938 in the Los Angeles area at the time we were short of work and went into the area and got one store rebuilding.

Q. That was in 1938 and the circumstance of your bidding on that job was that you needed the work to keep your plant running?

A. 1938 was a very bad year. Normally we aren't competitive on tier buildings within the metropolitan Los Angeles area.

Q. Who are the ones who served that area?

A. I would say that Consolidated was. They have built a number of tier buildings in that area.

Q. Do they have any competition? What about Bethlehem?

A. Bethlehem, of course, is equally—well, Bethlehem and Consolidated both have plants there that can handle the work and truck it to delivery points so there is no backhaul freight to speak of, and they have us. They have a freight advantage over us in that district which makes us noncompetitive.

Q. As a matter of fact, in that construction wide flange beams are made?

A. That is right.

221-234 Q. Bethlehem Steel and U. S. Steel manufacture them?

A. That is correct.

Q. Consolidated does not?

A. That is right.

Q. So Consolidated has to buy those wide flange beams from either Bethlehem or U. S. Steel?

A. That is correct.

Q. You say that you aren't competitive in that area although you did take one job in 1938?

A. We took one job in 1938 and we took a small job in 1946 that was sold largely on an urgency basis. It was only 600 tons.

Q. Go on.

A. In Idaho there were no buildings built.

In Louisiana we bid on 14,283 tons and secured 3,131 tons, one of which was that photograph we showed of the Federal Building. The competition was Bethlehem Steel Company, Ingalls Iron Works, J. & L. Steel Corporation.

Montana, Nevada, and New Mexico had no tier buildings. Oregon we bid on two and lost them both.

Q. To whom?

A. The successful bidder, the one was Poole & McGonigle, a local fabricator, and the other we don't know.

Q. It wasn't Consolidated, was it?

A. I doubt it in that area.

224-235 Q. You don't know who the other was?

A. No, sir.

Q. Go ahead.

A. In Texas we bid on 12,449 tons and secured none.

Q. Who did secure that?

A. The successful bidders were Mosher Steel Company, Bethlehem Steel Corporation, and J. B. Beaird Company.

Utah, we bid on one and got none.

Q. Who got it?

A. Bethlehem Steel Company.

Q. Go on.

A. In Washington, we bid on none and got none.

The Court. We will take a five-minute recess at this time.

(At this point a brief recess was taken.)

224-236 By Mr. MILLER:

Q. You had finished the tier buildings?

A. Yes, sir.

Q. Now, I think the remaining classifications you have there you can very briefly summarize, can't you?

A. Yes, sir; I can.

Q. Without going into all the detail that we have so far.

A. I certainly can; yes.

Q. Will you try it and see how you make out.

A. All right, sir. The next classification is buildings for powerhouses which have somewhat the same character of tier buildings, but we are more highly competitive because the work is usually out West in connection with irrigation and power projects, so that it is more within our shipping range, and also much of the material has been sold to the Bureau of Reclamation which has taken delivery on Government bills of lading and used land-grant rates.

In the eleven states we bid on 17,297 tons and were awarded 5,381 tons.

Q. I will just ask you there of those on which you bid did Consolidated successfully compete on any of them?

A. Of the ones on which we bid Consolidated also bid on five and were awarded three having a total of 210 tons, and we secured 2,750 tons. In other words, out of the total tonnage 224—237 960 tons were secured by Consolidated and us.

Q. Are you sure you have that right?

A. Well, that is on which we both bid. We ourselves bid on 58 projects, 17,297 tons.

Q. The table I have here shows none were awarded to Consolidated.

A. Oh, yes; I am sorry. I was taking the others rather than Consolidated.

Q. What I asked you was whether any of that work was awarded to Consolidated?

A. No; the material on which we both bid—

Q. There was material awarded to others?

A. Yes.

Q. I won't take the time to go over it. Go right on to the next item, gates.

A. Gates, for power development work, as I said this morning, are quite complicated and expensive work. In the past they have been shipped on Government bills of lading and we have secured a considerable tonnage due to the fact that first the freight doesn't bulk so largely in the transportation costs and, secondly, the freight used in most cases has been land-grant rates.

Q. Is it true, to summarize this rapidly, that the total amount that you bid on was 19,720 tons and that you got 2,770 tons and Consolidated got 4,058 tons?

224—238 A. That is right, sir. That was the ones on which we both bid.

Q. And the balance, 12,000 and something, went to others?

A. That is of the ones on which we both bid.

Q. On which you bid?

A. We did secure 23,128 tons in which Consolidated was not one of the other bidders.

On specialties such as are handled as specialties by American Bridge Company we bid upon 56,000—

Q. I see I have made an error here. What I asked you about was the total amount of these gates on which you both bid. As a matter of fact, you bid on 65,263 tons, didn't you?

A. That is right, sir, the total.

Q. So that out of that 65,263 tons on which you bid Consolidated only bid on a part?

A. That is right.

Q. Consolidated and you together got roughly 6,700 tons out of the 65,000 tons; is that right?

A. We got—

Q. We are talking about gates now.

A. Yes, sir. We got 23,000 on which Consolidated did not even bid.

Q. Oh, yes; that is right. Now, will you state just what happened there and we will get it straight?

A. We bid on a total of 65,263 tons.

224—239 Q. You secured how much?

A. 23,128 tons.

Q. And the balance?

A. On which Consolidated did not even submit a bid. Of the balance on which Consolidated did submit a bid the total for bidding purposes was 19,720 tons. We secured 2,770 tons and Consolidated 4,058 tons.

Q. So that that tells the story. Go on.

A. On the specialties such as are manufactured by American Bridge Company we bid on a total of 56,076 tons and we secured 23,986 tons.

Q. Yes.

A. The majority of those tonnages were scraper material and blades for Wooldridge Manufacturing Company—that is, road scraper blades, furnace framing for Geneva Steel Plant, 9,675 tons of barges for the Inland Waterways Corporation.

Q. I notice that there are 1,841 tons on which Consolidated bid.

A. That is right, sir.

Q. And you secured none of that?

A. We secured none of that.

Q. And Consolidated secured 1,656 tons?

A. That is correct.

Q. Is there any particular explanation?

224—240 A. No, it was just a small tonnage which they probably found they were in a position to manufacture economically.

Q. Well, pass to towers and electric substations.

A. On that there is practically nothing to say except that we bid on a total of 114,665 tons and secured 57,037 tons of which 54,143 tons were in the State of Washington. As I said this morning, on transmission towers we are apparently only competitive when we are at a substantial distance away from the Southern California fabricators, principally Bethlehem.

On that work out of those total tonnages Consolidated and ourselves both bid on 7,541 tons.

Q. Neither of you got it?

A. Neither of us got any.

Q. Neither of you received any of it?

A. That is right, sir.

Q. It all went to others?

A. It all went to others.

Q. What about miscellaneous steel work?

A. On miscellaneous steel work we bid on 138,702 tons and secured 67,222 tons. The majority of that work was 22,430 tons of flight decks for ships manufactured in the State of Washington, which accounts for practically all of our Washington tonnage.

The rest was principally cracking tower supports and similar structures in the State of Texas.

224—241 In California, although it shows that we secured 4,349 tons, it was made up of quite a bit of material that went on Government bills of lading. Out of the 4,349 tons we sold in California, 3,420 tons to the Bureau of Reclamation and the U. S. Navy, so land-grant rates applied.

Q. All right, go ahead.

A. In the area in which we both bid out of a total of 4,469 tons we got none of it and Consolidated got 1,851 tons and the remainder went to others.

The next classification, of course, is fabricated products of Consolidated in which we did not bid.

The last classification is Miscellaneous Fabricated Material that, as we said, we put in to bring our totals up to one hundred percent.

Q. That is included so as to show all your fabricating work?

A. That is correct, sir, all fabricated products. That was 8,640 tons awarded to us in California, but of that 8,254 tons was king posts for ships. That is heavy derrick masts for ships.

The only other substantial tonnage is in Washington where it shows that we secured 4,127 tons. Of that amount 3,542 tons were miscellaneous material for Hanford Ordnance Works in Washington for some purpose that we did not know.

The total jobs in which both Consolidated and ourselves bid amounted to 3,326 tons. Of those we secured 1,979 tons and Consolidated secured 759 tons.

224-242 Q. Now, to summarize the whole thing in summary during the 10-year period, we bid in these 11 states on how much tonnage?

A. In the 10-year period we bid on a total of 499—no, pardon me, that is the awards. We bid on 1,273,152 tons.

Q. And of that secured how much?

A. 499,605 tons.

Q. And on how much of that did both you and Consolidated bid?

A. On 122,353 tons.

Q. How much did you get of that?

A. 38,920 tons.

Q. How much did Consolidated get?

A. 24,162 tons.

Q. So that on all of the tonnage on which you bid in the 11 states during the 10 years, Consolidated received only 24,000 tons?

A. That is right.

Q. Now, you have referred in the course of your testimony to land-grant rates. What is the effect of the abolition of those rates as to the future?

A. It will affect our business there very severely. A very high proportion—

Mr. Wright. If the Court please, I would suggest he is in a position to say what the effect of the abolition  
224-243 has been on the business. They have been abolished and I think we ought to add that as a little more reliable testimony as to any case of what might happen in the future. It seems to me the proper foundation is, to find out what if anything has been the result of the actual abolition of the rates, the last of which the witness said was abolished last October.

Q. Well, let me ask you this:

Have you got data there by which you can tell us on how much of that total tonnage of 490,000 tons was shipped on land-grant rates?

A. All except 78,559 tons went to the Federal Government or agencies of the Federal Government.

Q. Can you tell me the total of what was shipped on Government? Where is your other memorandum? I think you have that on page 48 there. You have a summary.

A. Yes. This is actual shipments.

Q. That is what I am talking about. You have been talking about bids and awards.

A. Bids and awards.

Q. Now, take the actual shipments. Those don't always correspond exactly to the amount of the award?

A. No, they vary by a small percentage.

Q. Either way?

A. Either up or down.

224-244 Q. The actual shipments you shipped was how many tons?

A. 490,385 tons.

Q. That is 9,000 less than the amount that is in the awards?

A. That is right.

Q. The total shipped, give us the amount on land-grant rates.

A. 306,448 tons were shipped to agencies of the Government on land-grant rates. That is 62.5% of the total.

Q. That doesn't seem to check with the other figure you gave first on the awards.

A. The other figures were the—the other figure I gave on awards was the period prior to 1940.

Q. For the period prior to 1940?

A. Yes, that is right.

Q. I thought we were talking about two different things. This includes the whole 10-year period?

A. This includes the whole 10 years. We made up some trial figures to see on the period prior to 1940.

Q. What has happened to the freight rates where you have to ship at commercial rates?

A. They have increased.

Q. Have you made up a couple of tables showing exactly what the comparison between the land-grant rates and the commercial rates and the increases that have been made in the

224-245 regular rail rate?

A. Yes, sir; I have.

Q. I show you this. Is this a comparison of the land-grant rates with the commercial rates?

A. Yes.

Q. Now, will you please explain to his Honor, the land-grant rates are supposed to be confidential, aren't they.

A. That is right.

Q. How do you find out what they are?

A. Well, over a period of time in any large project, such as Grand Coulee, Shafter Dam, Boulder Dam, it is fairly easy to determine from comparison of Government awards what the approximate land-grant rate is, as that is used by the Government in determining the low bidder for the purpose of award.

Q. The figures that you are giving there is the approximation to the best of your ability. Judging from the awards you had to determine what the rate actually was?

A. That is right, and I am confident that they are on the high side rather than the low side.

Q. That is an estimate?

A. That is correct.

Q. These other figures are actual figures taken from the rate books?

A. That is right.

224-246 Mr. MILLER: I offer this document in evidence.

Mr. WRIGHT: I think it would help if I would ask him a couple of questions.

Mr. MILLER: Go ahead.

By Mr. WRIGHT:

Q. These rates per ton, that is per ton of what class material?

A. That is for structural steel, and the short ton, 2,000 pounds.

Q. Per ton of structural steel?

A. Yes, sir; that is the rate which I am naturally interested in.

Q. Is that the rate at which all your fabricated structures did move?

A. Yes.

Q. Doesn't the fabrication in transit privilege have any effect on that? Don't you, on some cases, get a railroad steel rate?

A. Our principal plants are, of course, at Gary and Ambridge, and there we just have the switching charge. On an FIT rate through the Minneapolis plant or Memphis, for instance, the FIT rate of half a cent a hundred applies. I think I have the FIT rates. No; I haven't got them through.

Q. In any event, this table doesn't then, actually necessarily show the rate at which the shipments you made into  
224-247 this territory during the 10-year period actually moved at all, then, does it?

A. Those show. You are looking at the land-grant rate.

Q. I am looking at your comparison of land-grant rates and commercial rates. I say that the table doesn't purport to show the actual rates at which either the fabricated steel you shipped into the area or that others shipped into the area actually moved.

A. Yes, sir; it does. The commercial rates were the rates we used when we sold to a commercial customer. The land-grant rates are the ones, in our best estimate, which represent what the Government charged against those things at those particular times.

Q. I understood you to say that you didn't have listed on here the fabrication in transit rates which might apply to commercial tonnage and might be different from those you have listed here; is that right?

A. Well, they would be—what is it, 0.005, isn't it, land-grant, FIT?

Q. I don't know.

A. No. We made this from our Gary plant principally and our Ambridge plant, as you will see. Those plants are located in the switching area.

Q. Yes; but these rates here don't necessarily represent rates at which your competitors' tonnage actually moved into 224—248 the area at all, do they?

A. No, sir; they represent the rates at which our tonnage moved.

Mr. MILLER. We are only offering this to show its effect on us, that is all.

Mr. WRIGHT. That is all the questions I have.

(The document referred to was received in evidence and marked "Defendants' Exhibit 35.")

By Mr. MILLER:

Q. Now, I show you another tabulation. Does this accurately show, according to the published railroad tariffs the freight rates from Gary and Ambridge which you used for shipment to the West, the 1937 FIT rate and the present FIT rate?

By the COURT:

Q. What is FIT?

A. Fabrication In Transit.

Mr. MILLER. The fabricator has a stop-over privilege. He takes the rate from the point that the plain material was shipped, goes through his fabricating plant and on to destination with the rate from the origin with a slight sum added for the stop-over privilege.

A. Yes, sir; those do represent the rates.

Mr. MILLER. I offer that in evidence.

Mr. WRIGHT. We have no objection to either of these provided it is clearly understood, of course, that they are not 224—249 representative of the rates at which the competitors' product actually moved. For that reason it is difficult for us to see how they are relevant in any estimate of what the rates are due to the competitive position of the Steel Corporation in any event.

Mr. MILLER. Well, we will see about that. We have only offered them to show the effect on our ability to make shipments to the West under these new rates.

Mr. WRIGHT. I submit it shows nothing on their ability to make shipments to the West unless you consider it in relation to what it cost competitors to make shipments to the West.

224—250 The COURT. Well, I am wondering would it have an effect, Mr. Wright, upon their basis as a competitor?

Mr. WRIGHT. Well, all this proves, as I see it, is without the land-grant rates it would be less profitable for them to ship into

the West than it now is. That falls far short of proving that they could continue to ship into the West on a competitive basis without the land-grant rates. The mere fact that it affects their profit margin or may reduce it does not at all show that this rate difference would reduce it to any extent which would actually foreclose them from that Western business.

The COURT. Well, I don't know that evidence has to go the whole distance.

Mr. WRIGHT. Well, I fail myself to see that it has a tendency to prove anything more than the very obvious fact that you might have less profit on the business if the freight rate was at one point than you would at another. Whether or not the difference is enough to shut you out of a particular market certainly can't be shown by any such evidence as this.

Mr. MILLER. I am merely laying the foundation. I want to go on, of course.

(The paper marked "Commercial Freight Rates" was received in evidence and marked "Defendants' Exhibit No. 36.")

By Mr. MILLER:

Q. Will you state to the Court, if you can, just what 224—251 effect the increase in the regular commercial railroad rates and the abolition of the land-grant rates has on your ability to ship products into the Western territory that we are talking about in competition with your competitors?

Mr. WRIGHT. If the Court please, I submit that calls for a conclusion based upon a consideration of a number of factors which the witness has not even placed before the Court. I suppose the effect could only be determined by a full consideration of the precise competitive position of the company itself, not only these freight rates. Those are only one element, of course, in the whole competitive situation. I suppose cost of steel, cost of the rolled steel, might also have considerable to do with it.

Now, I suggest that the proper way in which to establish any alleged competitive effect is to have evidence of the various factors which affect the competitive position, and then I submit that Your Honor is in as good or better position than this witness to say whether or not those factors would have an adverse effect on the ability or whether those factors would prevent the American Bridge Company from doing as much business in this area in the future as they have in the past. At best it is a very speculative guess, but in any event I don't see any particular reason for receiving a guess of that character without having any foundation laid as to what it is based on.

224—252 The COURT. Well, the only difficulty I am in, Mr. Wright, is if it calls for a conclusion it is obvious to the Court. Now you told me the Court can't arrive at it.

Mr. WRIGHT. I suggest that the Court is the proper person to reach the conclusion rather than the witness.

The COURT. If your objection is that it calls for a conclusion I understand that reason.

Mr. WRIGHT. Yes. I am also objecting on the further ground that at this time there is no proper foundation laid on which such a conclusion could be based; that you don't have before you facts which would enable you to reach an intelligent answer to that question.

The COURT. Of course, I know nothing whatever about the matter except this: That it does seem to me that the abolition of the land-grant rates will necessarily increase the cost of the shipment by the Eastern manufacturers to the West Coast. That much is clear to me.

I will hear you, Governor Miller, if it is just that point that he was going to express an opinion on.

Mr. MILLER. It is not really an opinion. He will make this factual, your Honor.

The COURT. I beg your pardon?

Mr. MILLER. I said the witness will make this factual. I perhaps have asked a bungling question.

I will ask this question:

224—253

By Mr. MILLER:

Will you state the particulars to the Court as to the situation in which you will be competitively with Bethlehem's plants on the West Coast without this freight reduction and any other facts and circumstances that you know of that enter into it? I am not asking for conclusions. Give the exact facts.

A. Well, the records that we have just gone through show that we can participate in Western business to any degree only when in the past we have had either some advantage by the way of an extremely specialized product or some freight—I would not call it an advantage—but some freight concession, because that goes some way towards relieving the freight differential under which we have been laboring. For instance, in railroad bridges in which the carriers supply their own transportation at reduced rates we have been competitive.

Q. Yes; you have told us about that.

A. On material shipped on land-grant rates we have secured substantial tonnages. Outside of that, the commercial tonnages secured have been inconsequential.

Q. Now, what will happen to those? That is what I am getting at.

A. You mean the commercial tonnages?

Q. Yes.

A. Well, they will be—

224—254 Q. I don't want you to give any opinions now. State facts. Let me ask you another question right in this connection. Rolled-steel products are now being manufactured in the West?

A. That is correct, sir.

Q. Sold on Western basing points?

A. Yes, sir.

Q. Sold to Western fabricators?

A. That is correct.

Q. Who haven't got the long haul?

A. That is right.

Q. Now, I want you to factually compare for the Court what your situation now is with the present rate structure as compared with the fabricators on the Coast who are able to get their plain material, as I have said, and state that, if you can, factually to the Court. Just what effect does it have in dollars and cents, if you will?

A. Well, sir, it costs us \$25.54 commercial freight from our Midwest plants to deliver structural-steel products in the West. By comparison, Geneva Steel is available at a price base that is three dollars above the Midwest price base. There is a freight rate just recently established from Geneva to Pacific Coast points of \$9.89.

Q. So the total cost, then, to a fabricator on the Coast, including transportation, would be what?

224—255 A. \$12.89.

Q. \$12.89?

A. As compared with the \$25.54 that it cost us to haul our material from Gary.

By the COURT:

Q. What was the three dollars?

A. That is the price base of material at Geneva.

Mr. MILLER. The price base of steel at Geneva is three dollars a ton higher than in the East.

The COURT. I see.

Mr. MILLER. That is a matter that can be explained.

The COURT. I understand.

By Mr. MILLER:

Q. The fabricator in the West has got to pay a price base of three dollars a ton more, but his transportation cost is only what?

A. \$9.89.

Q. Or a total of—

A. \$12.89.

Q. And you have a transportation cost of how much?

A. \$25.54.

Q. So there is a difference of \$12 a ton?

A. Yes, sir.

Q. Do you make any such profit as that?

A. I wish we did.

224-256 Q. Any part of it?

A. We make a part of it. That is what we are in business for.

Q. I mean would your costs put you out of that market, completely?

A. Oh, yes, sir.

Q. Then I ask you is it a fact that on this ordinary class of business, standard structural shapes are produced in the West available for that kind of work?

A. Yes, sir.

Q. Then I ask you whether or not on work for which that class of material is available in the West you can possibly compete in the future on a paying basis?

A. No, sir; we cannot.

Q. What class of business would you have left that you are now doing?

A. I think we would continue with the railroad business due to the fact that the railroad rates to a large extent perhaps offset our freight disadvantage.

Q. That is, the railroads take delivery at the plant?

A. That is right, sir. Outside of that—

Q. What about a structure like the Transbay Bridge?

A. We would still be in a position to get that because of the size of the job being beyond the capacity of the ordinary structural fabricator.

224-257 Q. Well, now, let me ask you this: Is it a fact that the Bethlehem Steel Company with its Western fabricating plants is able to supplement the things which they are able to fabricate with the more difficult and complicated parts fabricated in the East?

A. It is a fact.

Q. And does that enable those plants to compete for any class of business?

A. It does, sir.

Q. If the facilities of Consolidated were united to those of the Bridge Company's could those Western facilities of Consolidated thus supplemented compete with Bethlehem for all jobs?

A. They could and would.

Q. Could it even compete for a job like the Transbay Bridge?

A. It would undoubtedly fabricate a large part of it.

Q. Now, as a matter of fact, you sublet a part of the Transbay Bridge to Western fabricators, didn't you?

A. That is correct, sir.

Q. How much?

A. Twenty-one percent. That is twenty-one percent out of 149,000 tons.

Q. And Western fabricators able to fabricate that 21% and having the Eastern mills to draw on for the more  
224—258. difficult fabricating work could easily have bid on the Transbay Bridge, could they not?

A. Yes, sir.

Q. And there is now only one fabricating company in the West operated by the parent company which is in the business of manufacturing the plain materials and which can supplement the work of the Western plants with its Eastern plants?

A. That is correct.

Q. And that is the Bethlehem Steel Company?

A. That is the Bethlehem Steel Company.

224—259. Q. And if the facilities of Consolidated and the facilities of the Bridge Companies were combined, there would then be a competitor on the West Coast that could compete with Bethlehem in all classes of work?

A. That is correct, sir.

Q. And compete for work that the small or medium fabricator can't even go after now?

A. Yes, sir.

Mr. MILLER. You may cross-examine.

The COURT. My offer to Governor Miller applies to you also, Mr. Wright. If you wish to sit down, it is perfectly all right.

Mr. WRIGHT. That is all right.

Cross-examination by Mr. WRIGHT:

Q. Getting back to this question of structural and plate fabrication, actually when you talk about structural fabrication and plate fabrication you aren't talking about any difference in end products, are you? You are talking rather about a difference in what you work with, isn't that right?

A. No, sir; your end products are entirely different.

224—260. Q. Well, your structural shape, I take it, is something that you say you take and you punch holes in it and then rivet it and weld it into such ultimate shape as may be necessary to fill some particular job; isn't that right?

A. That is right.

Q. And your plates, you do the same thing with, except that your plates you have to form or shape to some extent yourself to get them into the ultimate shape that you want them in order to make them usable in some structure; isn't that right?

A. That is right.

Q. And they both wind up, both your plates and structural shapes, wind up in the form of some end product which may be entirely composed of one or the other or it may have both, isn't that right?

A. No, sir.

Q. You don't know of any structure which are made by fabricating both plates and structural shapes; is that right?

A. Structural fabricators use a certain amount of plates in their business, that is correct.

Q. Yes; most of the structures they fabricate require, to some extent, the use of plate and other, what you call, plain materials in their manufacture, don't they?

A. That is right, in the form of gusset plates.

Q. Have you got those pictures here?

A. They are there, all right.

224-261 Q. Well, here is one that is described as 9710 girder for the Pit River Bridge near Redding, California.

Does that have any plate in it?

A. Yes, sir.

Q. Most of it is fabricated from plate, isn't it?

A. It is fabricated from plate, that is correct.

Q. That is one of your products that you make?

A. Yes, sir; but it is not a plate fabricator's product. It is a bridge fabricator's product.

Q. I understand that. I was merely suggesting that when you say a bridge fabricator, that designation is one which means something in terms of an end product, but when you say that a structural fabricator is not in the plate fabricating business you don't mean at all that he doesn't fabricate plates into finished structures, do you?

A. They are incidental to his work. The bulk of his work is with structural steel shapes. He uses bars and sheets in his work too.

Q. When you said that you were not equipped to fabricate plate products, you didn't mean that literally, did you?

A. Well, that is not a plate product.

Q. When you say you aren't equipped to fabricate plate products, you don't mean that you aren't equipped to fabricate plates; that is, you do have the equipment with which to do to plates what every plate fabricators do to them; isn't that right?

224-262 A. No.

Q. You don't.

A. We haven't got plate fabricator's equipment.

Q. What equipment did you use?

A. Those materials were run through an ordinary structural

fabricator's machine. Now, you notice, of course, the big web plate. That is the thing you notice most. They are covered plates all along the top. Those are run through ordinary beam punches. There is no forming. They are just run through the same punch that punches an angle or a beam.

Q. The Bridge Company, you say, has no equipment then for actually fabricating plates that would be adaptable to fabricating structural shapes; is that right?

A. Yes; we have a very small amount of plate fabricating equipment. We do small amounts in connection with our regular work. If we furnish a power house we may be required to furnish the bins at the same time. It is a very small proportion of the total work and is only sold, if we must sell it, along with the structure.

Q. But the mere fact that a structure may require the use of plates doesn't bar you from the job at all, does it?

A. If it is a structure?

Q. If it is a structure you bid it?

A. A plate fabricator's products are tanks.

Q. Suppose you have a structure which requires a tank as part of it. What do you do then?

A. We have never furnished a tank in a building, to my knowledge.

Q. When you say the Bridge Company—when you say we, you are referring to the Bridge Company?

A. Yes.

Q. There are other subsidiaries of the corporation which make tanks, take it, fabricate them?

A. Not tanks of the nature we are speaking of. You mean hot water tanks?

Q. A tank that might become a part of a structure.

A. I don't think there is any subsidiary of the corporation that makes a tank.

Q. How about U. S. Steel Products Company?

A. They don't make tanks that are built into structures.

Q. What kind of tanks do they make?

A. Certainly nothing that is used in our business.

Q. Suppose you have a dam job, then, where they want some gates and maybe some penstocks, too. You just bid on the gates?

A. Yes, sir; not the penstocks.

Q. And the penstocks by other subsidiaries of the corporation?

A. Not the type of penstocks that are used for these hydroelectric developments.

224—264 Q. What kind do they make?

A. They are great big welded, stress relieved penstocks.

Mr. MILLER. He said what kind they made, not what kind these were. He means the Steel Corporation.

The WITNESS. You mean the Steel Corporation?

Q. Yes.

A. They just make seamless pipe.

Q. They don't make any other kind of pipe? They don't make any welded pipe?

A. In small sizes.

Q. They don't make any welded pipe in small sizes; do you know?

A. I think I am, perhaps, the wrong person to ask.

Mr. MILLER. We have somebody here who can give you that information.

By the COURT:

Q. If you do have the information you can give it; if you don't, you can say so.

A. We certainly never sell any structures which have, in connection with them, penstocks or tanks of any size or any large amount of platework.

We do, as I said, if we furnish a power house, we may be required by specification to furnish the overhead bins for the coal and perhaps the stacks, but we do it with such equipment as we have, not economically, just because it is  
224-263 required by specification. We would not normally seek or be competitive in that class of work.

By Mr. WRIGHT:

Q. Is that plate fabricating equipment particularly expensive?

A. Not so much the expense. It is the skill that is required and the areas that are required.

Q. The Bridge Company doesn't have the requisite skill to fabricate the plates?

A. No, sir; we don't have the skilled plate men that regular plate manufacturers, such as Chicago Bridge and Iron, have.

Q. You never have had?

A. Never have had.

Q. You never have done any, what you call, platework?

A. We did ship work during the war.

Q. Ships, of course, are fabricated from plates, aren't they?

A. They are.

Q. How did you manage to do that?

A. The ships that we were manufacturing were of a very, very simple design, especially designed to be made by the regular structural fabricator.

By Mr. MILLER:

Q. They were landing ships, in fact, weren't they?

224-226 A. They were landing ships and they were designed with that in mind.

By Mr. WRIGHT:

Q. And you also make barges?

A. That is right.

Q. And you fabricate those from plates?

A. That is correct.

Q. And railroad cars?

A. We do a small railroad car business at Roanoke.

Q. You also fabricate those from plates, don't you?

A. Yes, sir.

Mr. WRIGHT. Now, I take it some one else, you say, will be on the stand to say what the other subsidiaries of the corporation do. I simply am not going to waste time in pursuing that, with this gentleman if somebody more competent is going to be available for examination later on.

Mr. MILLER. We will put some one on the stand that knows all about it. You are talking now about pipe?

Mr. WRIGHT. Yes.

Mr. MILLER. I don't agree to call any plate fabricator because we haven't got one.

Mr. WRIGHT. Will you read the last question and answer?

(The last question and answer were read by the Reporter.)

224-267

By Mr. WRIGHT:

Q. I think you said that the Bridge Company never had been in the business of what you call plate fabrication as such; that is, the production of plate products.

A. A long time ago we made riveted oil storage tanks for export.

Mr. MILLER. When you say a long time ago, tell the Court how long.

The WITNESS. I should say about 1921 or 1920.

Q. When was it that you belonged to the American Plate Fabricators Association out there in Chicago? Do you know what years those were?

A. No, I don't.

Q. You were a member of that institute at one time, were you not?

A. Not to my knowledge.

Q. Well, do you know whether you were or not?

A. No, sir; I don't.

Q. Have you got that Defendants' Exhibit 1? Now these companies that you have listed here on this Defendants' Exhibit 1,

among those are plate as well as structural fabricators, are there not?

A. Not many. Some are.

Q. You haven't indicated on there which are which?

A. I tried, so far as possible, to pick companies that 224-268 have substantial structural facilities.

Q. And whether or not they do substantial plate work is something you didn't pay any particular attention to in preparing the tables; is that right?

A. The major ones certainly don't do plate work.

Q. Bethlehem doesn't?

A. Not to my knowledge.

Q. This designation of yours, "Large plants," there, in which you have put American Bridge, Bethlehem, Fort Pitt Bridge Works and Harris Structural Steel, can you tell us just what test you used to decide why those should be called large as distinguished from those that you have on the medium sized classification?

A. Yes, sir. Those are companies which have handled the largest or very large projects in the past and have an annual capacity, demonstrated annual capacity, of structural products considerably in excess of the ones following.

Q. Do you know what the volume of business they did in, let us say, 1946, was?

A. Not offhand. It would be in the AIC reports.

Q. If the AIC reports showed the Fort Pitt Bridge Works as doing a total for the year of 1946 of about 30,000 tons, would you say that made them larger than Consolidated?

A. From the point of view of structural fabrication, yes, certainly.

224-269 Q. And you would still say that, if it appeared that for the first eight months of 1946 Consolidated's structural fabrication tonnage amounted to 27,000?/-

A. I would still say it because they have large facilities at Cannonsburg; that is, the Fort Pitt Bridge Works has large facilities at Cannonsburg and can handle considerably in excess.

224-270 Q. Well now, then, your classification here, I take it, is not based on volume of business—at least not on 1946 volume; but is based on what you term "capacity"?

A. No, sir; it is based on our general experience of the companies in the past, on the size of the jobs they have taken, the amount of tonnages they have apparently been able to handle without difficulty.

Q. As to difficulty you don't have any way of knowing, I suppose, how much difficulty any of these particular people encountered on a particular job, do you?

A. No. By "difficulty" I mean lateness in shipment and—

Q. What you know, I suppose, in general, is the volume of business that they did, don't you?

A. That is right.

Q. And you know in general what plant capacities are?

A. That is right.

Q. Where are the plants of Fort Pitt Bridge Works?

A. Cannonsburg, Pennsylvania.

Q. Just in that one location?

A. Yes, sir.

Q. Anywhere else?

A. No.

Q. Have you any idea how the actual capacity of that plant compares with the several plants operated by Consolidated and its subsidiaries?

224—271 A. I would say that it has approximately twice the capacity of Consolidated.

Q. To do what?

A. Structural fabrication.

Q. And how do you determine that? How do you arrive at that figure of twice? What do you consider?

A. I consider their own capacity to turn out bridges—

Q. I say you are measuring this on some estimate of the number and character of machines they have or the square footage or space or what is the basis for your statement that they have twice the capacity?

A. Their demonstrated capacity over a number of years to take large tonnages of structural and fabricated work.

Q. You would say, then, that if it appeared for 1946 Fort Pitt Bridge Works shipped about 30,000 tons of structural fabrication and Consolidated about 40,000 tons that Fort Pitt Bridge Works during that year was operating at a quarter or a third of actual capacity?

A. It is unfair to take any one year. You must look at a period of years.

Q. Well, the year 1946 is certainly one in which if any structural fabricator ever operated at capacity he would be operating at capacity then, wouldn't he?

A. No, sir; absolutely not. There was a shortage of steel throughout the entire year, and we ourselves operated  
224—272 far below our capacity.

Q. For 1946?

A. Yes, sir.

Q. Have you any figures as to what the capacity of Fort Pitt Bridge Works is?

A. No; I have not.

Q. Other than just your guess that it is twice as big?

A. That is so. The rated capacities are a very problematical thing.

Q. Well, where are the figures on rated capacities on which you base your guess?

A. Well, there are no figures on rated capacities for the general run of plants, but by reviewing the tonnages which they have handled over a period of years I think you will find it amply borne out that they are among the biggest.

Q. Well now, over what period of years do you say Fort Pitt Bridge Works handled more structural tonnage than Consolidated? What period are you talking about?

A. Well, we might take the years perhaps from 1921 to 1930.

Q. Consolidated was even in existence in the first eight years of that period.

A. Well, let us take the first four years of your period.

Mr. MILLER. That is 1937.

The WITNESS. 1937 to 1941.

224-273

By Mr. WRIGHT:

Q. Do you know what the tonnage of Fort Pitt Bridge Works was during the period 1937 to 1941?

A. No, sir.

Q. Can you give it to us within 10,000 tons?

A. No, sir; not without referring to the—

Q. Well, how do you know that it bore any relation to the tonnage of Consolidated during that period?

A. Well, after all, we are in the same business; we know fairly well what work we undertake. That is part of our business to know, and we know fairly well how they are operating.

Q. But you can't give me any tonnage figure for that period or for any year in the period?

A. No, sir.

Q. Or anything within 10,000 tons?

A. No.

Q. Of what would be right?

A. I could not.

Q. I notice you have the Fort Pitt Bridge Works here listed as a competitor that actually took business on which both it and the American Bridge Company bid in the eleven states there that comprised the Consolidated market. What job was that? Do you know?

A. I don't know.

Q. Does it represent more than one job?

224-274

A. I don't know. I could look it up for you.

Q. I listened carefully while you were reading these jobs. I didn't hear that name. Will you tell me what the job

is you relied on to make it a competitor in those eleven states?  
 A. Mind you, that just indicates that they competed successfully with us.

Q. Once during a period of ten years?

A. Yes. For all we know there may have been others.

Q. Well, as a matter of fact, you do know that the Fort Pitt Bridge Works does comparatively little business in those eleven states, don't you?

A. Well, it would naturally be little because it is such a distance away.

Q. You know it does do very little; isn't that right; and during this whole period you are talking about has done very little?

A. Perhaps that is true.

Q. In no sense is the Fort Pitt Bridge Works entitled to be classed as a large competitor in those eleven states; is it?

A. No; that is the national list.

Q. Any more than Harris Structural Steel Company would be?

A. That is correct. That is a national list.

224—275

By the COURT:

Q. You mean that is not a list confined to the eleven states?

A. No, sir. That is a list of the principal structural fabricators in the country.

By Mr. WRIGHT:

Q. So that that is all these stars mean on any of these companies which refer to competition in the eleven states, is simply that on one occasion during the ten-year period they may have actually taken a job on which they bid against Virginia Bridge Company is that right?

A. At least one.

Q. Whether or not it is more than one I suppose depends on the tabulation of this data that is in evidence here that you put in?

A. That is right.

Q. Did you ever tabulate that data to try to get some impression as to which of these companies actually were important factors in that particular market—that is, which bid a number of times instead of merely once?

A. No; we did not.

Q. You did not make any effort to do that?

A. No, sir.

Q. Now, as a matter of fact, in that area the tonnage shipped by Consolidated in 1946 was second only to that of the Steel Corporation's subsidiaries; isn't that correct?

224—276

A. I don't know.

Q. You haven't made any effort to find that out?

A. No.

Q. What is this classification of "Medium Sized Plants" here? What is that based on?

A. That is—well, it is superfluous to say it is medium-sized plants, but it is plants which are of substantial size and can do business consistently at some distance away. In other words, it is more than the small local fabricator.

Q. Well, what criterion did you use there? Did you use the tonnage for those people to put them in this medium-sized bracket?

224—277 A. My knowledge of the work they handle and to some extent the tonnage shipments as reported to the

A. I. S. C.

Q. As a matter of fact, on all of that list of yours Consolidated is certainly the largest in tonnage figures, is it not, of any of those groups?

A. Oh, no, sir.

Q. In the 11 states in which it sells its product?

A. Oh, in the 11 states it might be, but nationally, it certainly is not.

Q. Well you know it is, don't you?

A. I think so.

Q. Nationally, Consolidated is approximately as large, if not larger than any other fabricator, structural fabricator, except the Bridge Company and Bethlehem Steel; is that right?

A. No; I would say that Lehigh and Belmont and a number of others—

Q. Can you tell us what their tonnages were in 1946 which leads you to believe that?

A. No, sir. Apparently you can.

Q. I take it you have made some effort, haven't you?

A. Yes.

Q. To find out what the tonnages of these people are?

A. Certainly. That list was reviewed against their—

Q. The American Institute of Steel Construction—

224—278 Mr. MILLER. I object to counsel's interrupting the witness until he has completed his answer. He does that repeatedly.

The COURT. I don't think he does it intentionally.

Mr. MILLER. I know, but I am reminding him of it so that he won't do it.

By Mr. WRIGHT:

Q. That data on those tonnage figures is available from the Institute of Steel Construction, is it not?

A. Yes.

Q. That will show what the relative tonnage positions of these people are?

A. Yes.

Q. You apparently did not use that date, however, in preparing this list of large, medium, and small plants; is that right?

A. I used it as a guide.

Q. This is just some vague recollection of yours; is that right?

A. I would not say it was a vague recollection.

Q. Well, in any event, it is one recollection which is not available in tonnage form? You don't know what the tonnages of any of these people are?

A. There are so many of them that have changed during the war. International Steel, for instance, at Evansville, are now a substantial fabricator.

224-279 Q. You gave us a fairly elaborate break-down of these jobs in the 11 states where you had made bids and those which were awarded to American or Virginia Bridge and those which were awarded to someone else. That table did not indicate on it, did it, all of the jobs on which both you and Consolidated bid?

A. There might have been jobs in which we were both unsuccessful.

Q. Yes. That only showed—

A. No, no; wait a moment. We checked our records pretty carefully. There might have been other jobs.

Q. Well, I understand that you did prepare a table which showed all of the jobs on which you both bid; is that correct?

A. That is right.

Q. Have you got a copy of that? I would like to identify it.

The COURT. Mr. Wright, at any time convenient to you I would like to recess. It is now two minutes of five.

Mr. WRIGHT. I don't see any reason why we should not adjourn right now. This is as good a point as any.

Mr. MILLER. May I suggest, your Honor, since we have taken more time than I expected with this witness, that we begin at 10 o'clock in the morning?

Mr. WRIGHT. We might just have the table I was talking about marked for identification.

224-280-283 (The paper referred to was marked "Plaintiff's Exhibit 37" for identification.)

The COURT. Adjourn court until tomorrow morning at 10 o'clock.

(At this point the hearing was adjourned to Wednesday, June 18, 1947, at ten o'clock a. m.)

224-284 Wednesday, June 18, 1947, ten o'clock a. m.

Present: As before noted.

Mr. FINGER. May it please the Court, just before we adjourned yesterday afternoon there was a paper presented and marked

"Plaintiff's Exhibit 37" for identification. With your Honor's leave, and with Mr. Wright's consent, we desire to withdraw that document. May we have it withdrawn from the record?

The COURT. All right, Mr. Finger.

Mr. FINGER. Now, if the Court please, I desire to offer in evidence a compilation bearing the heading "Production of Steel Ingots and Steel for Castings." I ask that it be admitted as Defendants' Exhibit No. 37. A copy has been furnished to Mr. Wright.

(The compilation above referred to was received in evidence and marked "Defendants' Exhibit No. 37.")

Mr. FINGER. This document that I just offered is one of the series of compilations and statements that I am about to offer, and they are being offered with the understanding that we have had with Mr. Wright, that the persons who are responsible for their preparation and who will vouch for their accuracy are in court and will be available for cross-examination with respect thereto.

I next offer in evidence a compilation bearing the heading "Industry Production and Shipments of Plates, Shapes, Sheets and Bars and Total Steel Products" and ask that it be admitted as Defendants' Exhibit No. 38.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 38.")

Mr. FINGER. I now offer in evidence a compilation bearing the heading "U. S. Steel Public Shipments of Plates, Shapes, Sheets and Bars and Total Steel Products" and ask that it be admitted as Defendants' Exhibit No. 39.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 39.")

Mr. FINGER. I now offer in evidence a compilation bearing the heading "U. S. Steel Public Shipments of Plates, Shapes, Sheets and Bars into 11 States" and ask that it be admitted as Defendants' Exhibit No. 40.

(The compilation, referred to was received in evidence and marked "Defendants' Exhibit No. 40.")

Mr. FINGER. I now offer in evidence a compilation headed "United States Steel Subsidiaries, Public Shipment of Rolled Steel Products in 11 States" and ask that it be admitted as Defendants' Exhibit No. 41.

224-286 (The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 41.")

Mr. FINGER. I now offer a compilation headed "Estimated Steel Industry Distribution of Plates, Shapes, Sheets and Bars, Total U. S. A. and 11 States, Year 1937" and ask that it be admitted as Defendants' Exhibit No. 42.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 42.")

Mr. FINGER. I now offer a compilation headed "All Steel Mill Products, Estimate of Ford, Bacon & Davis of Apparent Consumption in 11 States" and I ask that it be admitted as Defendants' Exhibit No. 43.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 43.")

Mr. FINGER. I now offer in evidence a compilation headed "Consolidated Steel Corporation and Subsidiaries, Summary of Purchases of Rolled Steel Products from U. S. Steel Subsidiaries and from Others" and ask that it be admitted as Defendants' Exhibit No. 44.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 44.")

Mr. FINGER. I now offer a compilation headed "Structural Steel Industry, Estimated Bookings and Shipments for U. S. A. as Reported by American Institute of Steel Construction" 224—287 and ask that it be marked as Defendants' Exhibit No. 45.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 45.")

Mr. FINGER. I now offer a compilation headed "United States Steel Subsidiaries, Fabricated Structural Steel Bookings, Total U. S. A." and ask that it be marked as Defendants' Exhibit 46.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 46.")

Mr. FINGER. I now offer a statement headed "Structural Steel Industry, Fabricated Structural Steel Bookings, For Shipment into the 11 States" and ask that it be marked as Defendants' Exhibit No. 47.

(The statement referred to was received in evidence and marked "Defendants' Exhibit No. 47.")

Mr. FINGER. I now offer in evidence a statement headed "U. S. Steel Subsidiaries, Fabricated Structural Steel Bookings, For Shipment into the 11 States" and ask that it be marked as Defendants' Exhibit No. 48.

(The statement referred to was received in evidence and marked "Defendants' Exhibit No. 48.")

Mr. FINGER. I next offer a compilation headed "Consolidated Steel Corporation and Subsidiaries, Fabricated Structural Steel Bookings, For Shipment into the 11 States" and ask that it be admitted as Defendants' Exhibit No. 49.

224—288 (The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 49.")

Mr. FINGER. I next offer a compilation headed "U. S. Steel and Consolidated compared with Industry, Fabricated Structural Steel—Bookings, For Shipment into the 11 States" and ask that it be admitted as Defendants' Exhibit No. 50.

(The compilation referred to was received in evidence and marked "Defendants' Exhibit No. 50.")

Mr. FINGER. Next is a statement headed "U. S. Steel Subsidiaries, Fabricated Structural Steel Bookings of Product Types Not Included in American Institute of Steel Construction Reports" and ask that it be admitted as Defendants' Exhibit No. 51.

(The statement referred to was received in evidence and marked "Defendants' Exhibit No. 51.")

224—289 Next a statement headed "Consolidated Steel Corporation and Subsidiaries, Fabricated Structural Steel Bookings of Product Types Not Included in American Institute of Steel Construction Reports," I ask it be marked as Defendants' Exhibit 52.

(Statement referred to, received in evidence and marked "Defendants' Exhibit 52.")

Next a statement headed, "U. S. Steel Subsidiaries, Fabricated Structural Steel Bids and Awards—11 States." I ask it be admitted as Defendants' Exhibit No. 53.

(Statement referred to received in evidence and marked "Defendants' Exhibit 53.")

Next a statement headed, "U. S. Steel Subsidiaries, Fabricated Structural Steel—Bids and Awards—11 States By Job Classification and by Year." I ask that it be admitted as Defendants' Exhibit No. 54.

(Statement referred to received in evidence and marked "Defendants' Exhibit 54.")

Next a statement headed, "Consolidated Steel Corporation and Subsidiaries, Fabricated Structural Steel Bids and Awards—11 States by Job Classification." I ask that it be admitted as Defendants' Exhibit No. 55.

(Statement referred to received in evidence and marked "Defendants' Exhibit 55.")

224—290 Next a statement headed, "Consolidated Steel Corporation and Subsidiaries, Fabricated Structural Steel Bids and Awards, 11 States, by Job Classification and By Years." I ask that it be admitted as Defendants' Exhibit No. 56.

(Statement referred to received in evidence and marked "Defendants' Exhibit 56.")

Next a statement headed, "U. S. Steel, Analysis of Jobs Bid—11 States." I ask that it be admitted as Defendants' Exhibit No. 57.

(Statement referred to received in evidence and marked "Defendants' Exhibit 57.")

Next a statement headed, "United States Steel Corporation Subsidiaries, Fabricated Structural Steel Sales (American Bridge Company and Virginia Bridge Company) 11 States." I ask that it be admitted as Defendants' Exhibit No. 58.

(Statement referred to received in evidence and marked "Defendants' Exhibit 58.")

Next a statement headed, "Consolidated Steel Corporation and Subsidiaries, Sales by Years—Tons." I ask that it be admitted as Defendants' Exhibit No. 59.

(Statement referred to received in evidence and marked "Defendants' Exhibit 59.")

Next a statement headed, "Consolidated Steel Corporation and Subsidiaries, Sales by Years—Dollars." I ask that it be admitted as Defendants' Exhibit No. 60.

224—291 (Statement referred to received in evidence and marked "Defendants' Exhibit 60.")

Next a statement headed, "Estimates of Production of Fabricated Structural Products—Eleven States, 1937 and 1939." I ask that it be admitted as Defendants' Exhibit No. 61.

(Statement referred to received in evidence and marked "Defendants' Exhibit 61.")

Next a statement headed, "United States Steel Subsidiaries—11 States—Analysis of Jobs Bid by Both U. S. Steel and Consolidated Steel, 10 years." I ask that it be admitted as Defendants' Exhibit No. 62.

(Statement referred to received in evidence and marked "Defendants' Exhibit 62.")

And a statement headed, "Comparison of Consolidated Steel Corporation Purchases from Each Steel Supplier, (Except Subsidiaries of U. S. Steel Corp.; agencies of the United States Government and Suppliers for whom Their Total Sales are not available) Named in the Answer to Interrogatory No. 21," etc. I ask that it be admitted as Defendants' Exhibit No. 63.

(Statement referred to received in evidence and marked "Defendants' Exhibit 63.")

Mr. Wright, do you wish to complete the cross-examination of Mr. Obbard?

Mr. WRIGHT. Yes; we might as well do that. What 224—292 was the title of your Exhibit 62? This Exhibit 62, that is the table that is a copy of the one that was identified yesterday as Exhibit 37, isn't it?

Mr. FINGER. No.

NORMAN B. ORBARD (resumed).

(Cross-examination (continued) by Mr. WRIGHT:

Q. Referring to that 134,000-ton bridge, what was it you called that, the one in California?

A. That was the Bay Bridge.

Q. The Bay Bridge?

A. That is right.

Q. That 134,000-ton bridge—

Mr. MILLER. That is 149,000 tons.

Q. (Continuing.) That 149,000-ton bridge, that Bay Bridge, doesn't appear in your tabulation here of competitive work at all, does it?

A. No, sir; it was taken prior to that time.

Q. I thought you said it was built in 1940.

A. No.

Q. What was the time when it was built?

A. It was under construction in 1933, 1934, and 1935.

224-293 Q. 1933, 1934, and 1935?

A. Yes; that is correct.

Q. It was finished in 1935?

A. It was finished prior to your 1937 date.

Q. Was that a job which was taken on competitive bids?

A. Yes, sir.

224-294 Q. There have been jobs, I suppose, in which you would negotiate a contract rather than simply submit it on competitive bids?

A. Not on public work of that nature. There were some negotiated contracts during the period of the war.

Q. That was for the State of California, was it?

A. That was for the Bay Bridge Commission, the Bridge Commission formed for the purpose of building the bridge.

Q. Who were the other bidders on that? Do you know?

A. I could not say, sir. Bethlehem was certainly one.

Q. You don't know whether Consolidated bid on that or not?

A. No; they did not.

Q. You know?

A. I would like to have you check that from Consolidated.

Q. Well, you don't know yourself. You think they didn't but you are not sure?

A. That is correct.

Q. Have you got the exhibit there that you prepared with reference to freight rates? I believe there were two of them, one relating to land-grant rates and the other relating to commercial rates.

This Exhibit 35 that you prepared I notice that is an estimate of land-grant rates in effect during the period 1937-1940 and a comparison with commercial rates then in effect.

224-295 A. As of the date on which we estimated the land-grant rate.

Q. The reason for the 1937-1940 limitation was, I take it, in 1940 the railroads were authorized to abandon the land-grant rates except as to Army and Navy material; isn't that right?

A. That is correct, sir.

Q. So that the only land-grant rates that were in effect after 1940 were those on shipments to the Army or the Navy; isn't that right, on war material?

A. Well, you will see from our records that the majority of work during these periods—

Q. Can you answer the question first?

A. As far as I know, yes.

Q. And those were the rates that you referred to as having been discontinued in October 1946?

A. The last of them.

Q. So since October 1946 there are no land-grant rates on work of any character?

A. That is correct.

Q. These figures that you gave us were not quite clear to me from this record. On page 243 you were asked, "Have you got data there by which you can tell us on how much of that total tonnage of 490,000 tons was shipped on land-grant rates?"

224-296 Then you answered, "All except 78,569 tons went to the Federal Government or agencies of the Federal Government."

That I take it was not a responsive answer to the question, because during the period all shipments to the Federal Government did not take the land-grant rate, did they?

A. We didn't know what rates the Federal Government used in many of their shipments. They were shipped on Government bills of lading. They may perhaps have gone under Section 22; they may have gone under land-grant rates.

Q. At least as far as your answer there is concerned you did not know what percentage of the shipments referred to actually did move on land-grant rates?

A. No.

Q. At page 244 you were again asked as to actual shipments on land-grant rates, and there you said, "306,448 tons were shipped to agencies of the Government on land-grant rates. That is 62.5% of the total."

Now, are you talking there about shipments which you actually

know moved on land-grant rates or merely about shipments to the Government?

A. They were shipments to the Government that we had reason to believe went on land-grant rates.

Q. What was the basis for that belief? Have you got any work sheets which show how you figured that 306,000 tons?

A. Yes, we have work sheets on that.

Q. Could we have your sheets on that?

224-297 A. Yes, sir.

Q. Did you actually make that tabulation yourself?

A. I was in general charge of it, but the final tabulations—

Q. Do you know how to determine whether some shipment actually moves on land-grant rates?

A. It is very difficult for us to tell exactly.

Q. You only have a look at half a dozen statutes, I suppose?

A. We can't even tell that. May I take an instance?

Q. Yes.

A. On the basic magnesium job in Nevada, which was the only large job in Nevada during the period, we shipped on commercial bills with a notation that those might be exchanged by the Government for Government bills of lading. Now, what they did after that we don't know.

Of course, the period you are speaking of during the war is one in which, shall I say, the competitive advantage of land-grant rates was not of such importance, because many jobs were sold on a basis of urgency—that is to say, they required large fabricating companies to turn the material out fast.

Q. Well, in any event, this figure that you gave here at page 244 of the tonnage shipped throughout the ten-year period that represented shipments on land-grant rates, that is simply

224-298 a guess as to what moved on those rates?

A. That is simply an approximation, sir.

Mr. WRIGHT. Can we have those work sheets that show the basis for the approximation? We don't need to examine them now, but after we look at them we may want to call him back.

Mr. MILLER. Certainly, sir.

By Mr. WRIGHT:

Q. Did you make an effort here in dealing with these figures to determine to what extent the presence or absence of land-grant rates actually gave you a job or prevented you from getting one?

A. Well, we know or rather knew and always did know that land-grant rates gave us a very substantial advantage. We knew the approximate freight advantage we got and certainly it was a factor in leading us believe that we could competitively bid upon jobs which would be shipped.

Q. Well now, will you answer that question?

A. Will you repeat it for me?

(The pending question was reread by the reporter as follows:)

“Q. Did you make any effort here in dealing with these figures to determine to what extent the presence or absence of land-grant rates actually gave you a job or prevented you from getting one?”

A. There is no doubt that many jobs awarded us 224—299 when land-grant rates were in effect were awarded us solely due to the advantage which land-grant rates gave to us.

Q. Can you answer the question now?

A. Let us have it again.

(The pending question was re-read by the reporter as follows:)

“Q. Did you make any effort here in dealing with these figures to determine to what extent the presence or absence of land-grant rates actually gave you a job or prevented you from getting one?”

A. Well, sir, we have told you—

Q. Did you make any analysis of the jobs to find out whether in the particular job or group of jobs the presence or absence of land-grant rates affected who got the work?

A. We have made no detailed analysis, but it has been our experience for years and years in bidding on that class of work—

Q. The answer is no to the question; is that right?

The COURT. Is your question, Did they make an analysis?

Mr. WRIGHT. Yes.

By the COURT:

Q. Did you make an analysis or a list of the various cases?

A. You mean the various jobs?

Q. Yes.

224—300 A. No, sir; we did not.

By Mr. WRIGHT:

Q. Specific jobs?

A. No, sir; we did not.

Q. So again your statement that the presence or absence of land-grant rates to determine who got the job as far as you are concerned is just a general impression or guess?

A. No, sir. We have in our files many records of bids on Government work on which we got the job by reason of the existence of land-grant rates.

224—301 Q. Well, have you got any of those records here? Did you tabulate them? What did you do with them?

A. No tabulation has been made.

Q. Didn't you look at them to try to find out how many of those jobs there were or what the proportion of business that you got was which could fairly be said to be yours because of the land-grant rates factor?

A. We have made no detailed analysis of that nature because as each job—

Q. Have you made any analysis?

Mr. MILLER. Let him finish.

A. (Continuing.) As each job comes up for bidding we consider it on its merits. We consider the freights to the destination involved; we consider prices quoted by competitors on similar work. We review our bid carefully and we certainly take into consideration the presence or absence of land-grant rates and whether we can competitively bid on the work.

Q. I understand you take that under consideration. I want to know whether you made any analysis of any kind of your records in order to determine which, if any, jobs that you got you actually got because of the presence of land-grant rates.

A. No, sir; because we operate on a contract basis. Each job is an individual contract. We make an individual estimate.

Q. By the way, did you ever find the job on your work 224—302 sheets there which won the Fort Pitt Bridge Company the star as some one who had competed with you in the Western market?

A. Well, sir, I am glad you brought that up. We checked the average production of the Fort Pitt Bridge as compared—

Q. First can you answer my question and then you can tell me all you want to about Fort Pitt Bridge.

A. I haven't looked at it myself. You have the work sheets.

Q. The only one I could find there—and I call your attention to it—is the one listed on page 29 of Defendants' Exhibit 25, which was a job described as structural framing for wind tunnel at Moffet Field, California, sold to the United States Government. Fort Pitt Bridge Works is listed as the company to which the contract was awarded, and the contract was 390 tons. That, I take it, was a job which on land-grant rates?

A. I think so.

Q. And the same land-grant rates applied on the job as awarded to Fort Pitt Bridge that it did to you; is that right?

A. Certainly.

Q. As far as that particular job was concerned, you didn't lose that job to Fort Pitt Bridge Works because of the presence or absence of any land-grant rates. You know that 224—303 as a fact, don't you?

A. No. In fact, land-grant rates put the eastern fabricators in a position to quote on work like that.

Q. Yes. Now, did you make any tabulation or analysis of the work that you lost to Western fabricators while the land-grant rates were in effect as compared to the amount of work you lost to Western fabricators after the land-grant rates went off?

A. That would be extremely difficult to do for this reason: that beginning, I would say, 1938, fabricators were offered an opportunity to equalize land-grant rates in their bids; that is to say, they had objected so strongly to losing these jobs by reason of land-grant rates that they secured from the Government, insertion in many Government requests for bids, an opportunity to equalize, that is to say, bring down their price so that they would not lose the job by reason of the land-grant rates, and that was put in because many fabricators were losing jobs by reason of land-grant rates and they considered it unfair.

Mr. WRIGHT. I don't think he is competent to say what other fabricators considered. If you will just confine yourself to answering the questions I think we will get along better. Governor Miller will ask you all the questions necessary to bring out whatever you want to say.

Mr. MILLER. You stopped him from making a statement a moment ago and said that he could make it as soon as he had answered your question in reference to Fort Pitt Bridge Works. Don't you want to give him the opportunity to make the statement?

Mr. WRIGHT. I would prefer to proceed with my cross-examination.

Mr. MILLER. Very well.

Q. Now, actually the amount of freight on any job of any size, in any event, is a rather small percentage of the total bids; isn't that right?

A. No, sir.

Q. What does it run?

A. When we are going far afield it is a large proportion.

Q. How much in percentage terms?

A. Well, we spoke to light highway bridges, for instance. The current cost of those f. o. b. the fabricating plant, current price, rather, would be about \$120 a ton. Now, if you superimposed on that a 25/54 freight rate or even a \$12 freight disadvantage, such as we were discussing yesterday, you are operating at a loss.

Q. Let us just take the percentage figures. Never mind whether you are operating at a loss or not. It would run at the most about 10%; is that right?

A. That is right.

Q. That is the answer. Now, you didn't, however, make any analysis to determine whether or not that 10% was actually decisive in any particular job on which you bid?

A. It certainly is.

Q. Just answer the question.

A. We have, then.

Q. Do you have such an analysis?

A. You mean available?

Q. Yes. Where is it?

A. No; we haven't got it available here.

Q. Did you make it?

A. We have reviewed job after job.

Q. What did you do with the results of the review?

A. We decided we were not competitive with freight rates of that nature.

Q. You mean you decided not to present it hereto the Court?

A. No, sir. We review every job as it comes up.

Q. I am not talking about the review you make at the time you put in the bid. I am talking about what you did in preparation for the trial here.

A. No; we didn't do that.

Q. You didn't make any analysis or review to determine which, if any, jobs were actually lost or gained by you as a result of the presence or absence of freight rates of any kind, did you?

224-306 A. We felt that the over-all picture—

Q. Just answer the question.

A. No; not of any specific jobs.

The COURT. Mr. Wright, may I just ask you, just in order to make my own mind clear, because your mind is clear and his is clear. Do I understand the witness to say that the freight rate was one of a number of items entering into the question as to whether the over-all picture would entitle them to do it, therefore, he has no general analysis because the freight rates were one of a number of items entering into the over-all picture?

Mr. WRIGHT. Your Honor will recall I originally suggested if you were talking about the effect on competition you could not possibly attribute your being shut out of a particular market to a difference in freight rates, because that was only one factor.

Then the witness went on to make his freight rate tabulation and he went on to say that these freight differentials would actually shut him out of the Western market.

All I am trying to show is that there is no basis in fact whatsoever for any such an assertion about being shut out of the market by these freight differentials.

The COURT. Whether or not your question showed that, of course, remains to be determined.

224-307 Mr. WRIGHT. That is right. But that is what I am getting at. There is no question about the fact that the freight rate may create an advantage of disadvantage as between two bidders. The precise point we are inquiring into here is to the extent to which, if at all, that particular advantage or disadvantage gave somebody a bid or took it away.

224—308 Q. As a matter of fact, even on fairly small jobs you have gone into places like Arizona and Idaho without any land-grant rates or with a substantial freight disadvantage and taken business away from local fabricators in those states, haven't you?

A. As we get more distant from the Pacific Coast fabricators their back-haul rates increase—that is, their rates for hauling material back to places like Idaho where there are no fabricators of consequence. There Pacific Coast fabricators' rates increase and ours perhaps decrease, so we do get some work in districts in this area distant from Pacific Coast fabricators.

Q. Well now, will you answer the question?

A. Would you please read it to me.

(The pending question was read by the reporter as follows:)

“Q. As a matter of fact, even on fairly small jobs you have gone into places like Arizona and Idaho without any land-grant rates or with a substantial freight disadvantage and taken business away from local fabricators in those states, haven't you?”

Mr. MILLER. I submit he has answered it.

The WITNESS. Perhaps you would read my answer.

By Mr. WRIGHT:

Q. You can answer that yes or no.

224—309 A. All right. Yes.

Q. On this question of other factors I suppose the price of steel has something to do with the competitive situation of your company as against Western fabricators?

A. Yes, sir; it has.

Q. And at the same time this freight rate differential was in effect the Western fabricators were paying ten or fifteen dollars a ton more for their rolled steel, weren't they?

A. The amount has varied. In 1937 Pacific Coast fabricators were paying \$9 to \$12—well, \$9 to \$12 more for their steel than we—that is, including the freight, you understand—than we were paying at the mill. Now, our freight in those days from Gary was \$20.10, so that we had a freight disadvantage of from eight to nine dollars.

Q. That is providing that it was a job that was located at a point where the fabricator bidding against you incurred no freight whatsoever?

A. That is right. Now you are answering my question.

Q. Yours was all freight, and of course that applies only to a limited number of jobs in this 11-state market; is that right?

A. Well, I tried to explain earlier, but I am afraid you objected, that when the back haul became substantial from Pacific Coast fabricators to states such as Montana and Idaho we were approximately on a par.

224—310 Q. How about the following years? The cost of rolled steel advantage, do you still have that today or haven't you got it, and if you haven't got it when did you lose it?

A. Well, we explained to you yesterday, sir, that now with Geneva material that disadvantage has risen to the difference between \$12.89 and \$25.54.

Q. Well, in other words, the California fabricators still pay today twelve or fifteen dollars a ton more than you do for the rolled steel; is that right?

A. Delivered at their plants they pay for Geneva steel, as I said, \$12.89 more—

Q. Geneva or any other steel.

A. (Continuing.) Than our—

Q. They pay more whether it comes from a rolled steel plant in California or not, don't they?

A. That is right, but our freights have gone up, too, so that our disadvantage has been increased by the rise in freight rates.

Q. Now, Bethlehem, of course, has rolled structural shapes out there in California for some time, hasn't it?

A. In limited ranges.

Q. Well, whatever it is rolling, it has been rolling there throughout this ten-year period 1937 to 1946?

A. Yes, sir.

224—311 Q. And as far as Bethlehem is concerned whatever advantage they had from having a rolling mill out there of their own and fabricating facilities they had in 1937 as well as today; is that right?

A. Yes; that is right.

Q. All through the period?

A. Well, when you say "all through the period" it fluctuated throughout the period—

Q. Well, maybe with variations.

A. But there was some advantage.

Mr. WRIGHT. Have you got the work sheet exhibits? I think they begin with Defendants' Exhibit 24. Will you hand them to the witness, please?

Q. I show you here a certified abstract of bids on a project at Louise, Arizona, on which you were the winning bidder, and I will ask you to look at that and tell me if you can identify that as the award that you have listed at page 7 of your Defendants' Exhibit 24, the Arizona tabulation, a Bureau of Reclamation job?

A. What page of Arizona?

Q. Page 7.

A. Yes, sir; that is it.

Q. Will you read to the Court the figure that appears opposite the line "Amount for comparison" under your company?

A. American Bridge Company, \$169,305.

224—312 Q. That was your winning bid?

A. Yes.

Q. Consolidated's losing bid was what?

A. \$219,430.

Q. And the amount of freight that composed part of your winning bid was how much?

A. The amount of freight in our bid?

Q. In that case you quoted a delivered price?

A. We quoted a delivered price, that is right; knowing that the land-grant rates were no longer in effect on this work.

Q. This was a job that was taken in 1946?

A. That is right.

Q. Well, in any event, you can tell by looking at the sheet, can't you, that freight rates had absolutely nothing to do with your winning the award?

A. Oh, certainly. And may I tell you what did have something to do with it?

Mr. MILLER. Certainly. Go ahead and tell him.

Mr. WRIGHT. You can at a later time. I am interested at the moment in really developing the freight rate picture, Governor. You are at liberty to take him over all of this, but first I want to establish the fact as to the extent to which freight rates affected these awards.

Mr. MILLER. I submit he should have an opportunity to explain an answer that he has given right at the time.

224—313 The COURT. There is no question he can do that. The only question is whether this is an explanation of the answer.

Read the question, please.

(The last question and answer were read by the reporter as follows:)

"Q. Well, in any event, you can tell by looking at the sheet, can't you, that freight rates had absolutely nothing to do with your winning the award?

"A. Oh, certainly. And may I tell you what did have something to do with it?"

The COURT. That doesn't strike me that that is particularly material to that answer. He is asking about freight rates and his now attempted explanation is something about items other than freight rates.

Mr. MILLER. I judge so. I may forget to call it to his attention.

Mr. WRIGHT. Well, these will be in evidence, Governor.

Mr. MILLER. I know, I know.

Mr. WRIGHT. You will have an opportunity to examine on them.

By Mr. WRIGHT:

Q. I now show you this certified abstract of bids relating to another project at Louisa, Arizona, Specification

224—314 No. 1322, and you will find this at page 7 of Exhibit 24 also.

A. Yes, sir.

Q. That is one that Consolidated won; is that right?

A. That is correct.

Q. Do you recognize that there as the Consolidated bid you referred to in your table?

A. Yes, sir.

Mr. MILLER. Counsel, if you have many questions of this type hadn't he better sit where he has light and where he can see?

Mr. WRIGHT. Yes; all right.

The WITNESS. Do you want the figures?

By Mr. WRIGHT:

Q. Just read the winning figure for Consolidated:

A. The comparison of bids f. o. b. destination, Consolidated \$168,145.60; American Bridge Company, \$177,598.60.

Q. Now, by looking at that you can see that freight rates had nothing to do with the award of that character?

A. That is correct. I will have my explanation later.

Q. I show you this bid for specification 1819-D, a job at Friant, California. That you will find in your Defendants' Exhibit No. 25 at page 5. That is a job where American Bridge Company was the winning bidder or Consolidated?

A. That is right, American Bridge Company.

Q. Consolidated, I believe.

224—315 A. Yes; pardon me. Consolidated Steel Company was low bidder with a delivered cost of \$9,695 and American Bridge was second with a delivered cost of \$10,005.07.

224—316 Q. Now, on that job the Consolidated bid was made by Consolidated of Texas and the shipment was made from Orange, Texas; isn't that right?

A. It is so stated on the bid.

Q. And you can't tell from the bid the extent to which freight entered into the Consolidated bid, because they simply quoted a delivery price?

A. No, sir.

Q. As to this one you can't make any statement with reference to the irrelevance of the freight rate?

A. No, sir.

Q. I will show you this certified abstract, specification No. 1294, for a job at Oakhurst, California, that appears on Defendants' Exhibit 25 at page 5, and you will note Consolidated was low on that bid. You have them so recorded on your sheet.

A. Which did you say it was?

Q. That is at Oakhurst, California; page 5 of your California exhibit. This one, I think, although Consolidated was low, you show the award to American Bridge and apparently on the specification it says, "The Consolidated bid, although low, was rejected for legal reasons."

A. Yes; it had an escalation clause in it.

Q. You show that as having been awarded to American Bridge, do you not, on your Exhibit 25 there?

A. That is right, that is awarded to American Bridge.

224-317 Q. And, of course, the freight rates obviously had nothing to do with that award?

A. No.

Q. I will show you this certified abstract on specification No. 1145, destination Redding, California. That appears on page 20 of your exhibit 25, does it not? That is one in which you were low. You can tell from the tonnage, can't you, on the destination?

A. Yes, sir, we were low on that.

Q. And you can tell by an inspection of the abstract that freight rates had nothing to do with the award of that job; isn't that right?

A. That is correct.

Q. Then, I will show you this abstract of bids, Bureau of Reclamation, on your specification No. 1147, a project at Coram, California. That should appear at page 21 of your Exhibit 25. There are actually two items there, I believe, one of which neither you nor Consolidated got. I believe the item you got is the item No. 1, is it not? That should be recorded on your sheet. You were low. That is that 96 ton job.

A. That is correct.

Q. And you were low on that job even though there was a substantial freight differential the other way?

A. That is correct.

224-318 Q. I will show you the certified abstract on Bureau of Reclamation job, specification 1220, at Coram. That should be on the same page.

A. That is right. We are low on that.

Q. Your bid on that was \$491,505.99?

A. That is right.

Q. Consolidated's bid was seven hundred thirty-two-thousand-odd, right?

A. That is right.

Q. The freight rates had nothing to do with that?

A. Nothing to do with that.

Q. I will show you this Bureau of Reclamation abstract on specification No. 1223. I think you will find that at page 21 of your Exhibit 25.

A. Yes, here we are.

Q. That is the 233-ton job on that?

A. That is right.

Q. And you were low on that with a bid of one-hundred-sixty-seven-thousand odd?

A. That is correct.

Q. And Consolidated was \$10,000 above you even though you had a substantial freight differential against you; is that right?

A. We may not have had a substantial freight differential.

224-319 Q. It appears there that the freight on your bid was 8,259 and the freight on the Consolidated bid was 2,771.

A. You must remember that Consolidated had to pay freight on material to their plant. The freights you are looking at and the freights we have been discussing are the freights simply from their plant to destination.

Q. I take it the freight on the material to their plant enters into their rolled steel price?

A. That is right.

Q. The rolled steel price differential may have made up for the freight disadvantage?

A. Yes.

Q. I will show you this abstract of specification No. 1571 under shipment to Coram which appears on page 21 of your table. Now, we had some difficulty in determining whether this is what you have got on your table or not, because the date of this bid, you will notice, is open January 7, 1947. However, we could not locate one for the bid you recorded there. Can you tell, from inspecting that 996-ton bid that appears on page 21 of your exhibit 25, that that is this bid or some other?

A. That would be the bid. These were taken from our records, you see, of inquiries. No; wait a moment.

Q. It might have been bid in 1946 although not open until January 1947?

224-320 A. Yes.

Q. But you will notice that the low bid here is the American Bridge Company and on your table you have recorded Consolidated Steel as the low bidder.

A. You are quite sure this job wasn't bid twice?

Q. No. Well, in any event, you have records here that you can check this against to see whether there is an error in your Exhibit 25 or not?

A. Yes; that is correct.

Q. In any event, this bid, on its face, this specification 1571 shows, does it not, an award to American Bridge over Consolidated, which is totally unaffected by any freight rate consideration?

A. Yes, sir; no freight rate consideration there.

Q. And I will show you this abstract of bid on specification 1506, Bureau of Reclamation. That is an Idaho job. It should be on page 10 of your Exhibit 26, Cascade, Idaho.

A. That is right, sir.

Q. You find the job there, do you? This is one that went to Consolidated. That is the 22-ton job.

A. That is right.

Q. Now, on that \$20,000 job the freight rate actually cost you the job, didn't it?

A. It did.

224-321 Q. The difference in your delivered bids was only \$3.02, right?

A. Pretty good bidding.

Q. I will show you this abstract of specification 1406. That is for Bacon, Washington. It should appear on page 3 of your Exhibit 34.

The Court. You are making it sufficiently clear for a record, Mr. Wright?

Mr. Wright. I think so. I was going to have them all marked with exhibit numbers when we get through. I am reading the specification number in each time which, I think, will tie them later into the Exhibit numbers.

Q. That is Defendants' Exhibit 34. It should appear on page 3.

A. That is right.

Q. That is an \$11,900-odd job that you were low on, isn't it?

A. That is right. I have \$10,875 here.

Q. You have the amount there as well as the tonnage?

A. I have the amount of our bid, which was f. o. b. shipping point.

Q. On this specification 1406, the freight rates didn't determine your getting that bid?

A. No; but I point out that Milwaukee Bridge Company was second bidder.

224-322 Q. Yes. Consolidated or Orange, Texas, was third bidder in this instance?

A. No. The third bidder was Omaha Steel Works and the fourth bidder was Independent Iron Works.

Q. Consolidated was \$10,000 higher than you were?

A. That is right.

Q. So as between you and Consolidated, obviously freight rates made no difference and they made no difference as between you and the next low bidder, is that right?

Did you hear the last question?

A. What was that?

Mr. Wright. Would you read the last question to him?  
(Last question read by the reporter.)

A. That is correct.

Q. I will show you this certified abstract on specification No. 1254, a job at Odair, Washington. That would be Coulee Dam, would it not?

A. Yes.

Q. That should be on page 17 of your Exhibit 34.

A. All right.

Q. That appears on your exhibit there as having been awarded to you, does it not? You were not the low bidder, but I believe—

A. They rejected the low bid.

224—323 Q. That is right. The low bid was from somebody in Brooklyn and was rejected, and your bid of some \$50,000 more was accepted; is that right? That is the 245-ton job there.

A. That is right.

Q. And the Consolidated, which was the next lowest bidder, was \$212,982, was it not?

A. That is right.

Q. And the freight rates had nothing to do with whether or not you beat Consolidated?

A. That is correct.

Q. I will show you this abstract of specification No. 1122, which is for a job in Washington, also Odair, which should appear on your Exhibit 34 at page 16. Do you have that one?

A. Yes, I have.

224—324 Q. That is one you have listed as 845-ton job?

A. That is correct.

Q. On that Consolidated of Los Angeles quoted a delivered price of \$575,000; is that right?

A. That is correct.

Q. You can't tell how much freight was involved in their bid from the face of the abstract?

A. That is correct.

Q. Your bid on that, including \$11,000-odd freight, was \$636,000; is that right?

A. That is correct.

Q. So that as between you and Consolidated you can tell on the face of the bid that freight had nothing to do with who got it?

A. That is correct.

Q. Here is one, a specification abstract of bids on specification 1154 which shows a bid that Consolidated was successful on and on which you bid, and I could not find it in your table.

A. That is erection only.

Q. This was simply—

A. Erection only of gates. There is no freight in that, I trust.

Q. I would not assume so. In any event, Consolidated was low with \$134,000 and you were in there with \$236,000;

224—325 is that right?

A. Well, there was no freight in that outside of perhaps a little freight on erection equipment.

Q. At any rate, the freight could not have made any difference. I take it from what you have just said you did not attempt in making up this bid tabulation—

A. Excuse me a moment.

Q. I take it from what you just said about this last abstract of bids which is not recorded on your work sheet, I take it your work sheets do not purport to be a complete record of the jobs on which you and Consolidated bid?

A. That is contracts sold or bid upon. This is merely services.

Q. Yes, but I say there may be other jobs of that kind involving erection services on which you both bid which you have not recorded in the table at all; isn't that right?

A. No, sir; we have recorded all bids and inquiries which we had in those areas for materials.

Q. Which you had in those areas? That is, if there were bids on jobs on which both you and Consolidated bid outside the area that would not be in there either; is that right?

A. No, we were only interested in that area, the eleven states.

Q. I am just trying to get at the extent to which your 224—326 work papers that are in evidence here as exhibits 24 to 37, inclusive, actually represent the jobs on which both you and Consolidated bid. Now, do you know as you sit there whether or not there were other jobs besides this one I just showed you which were erecting jobs on which both you and Consolidated bid?

A. We bid on the drum gates for Shasta, on an erected basis. That is in there.

Q. I say, do you know whether or not there are any others, erection jobs, on which you and Consolidated bid besides the one I showed you that was not tabulated?

A. I am sure there are not.

Q. You are positive?

A. The reason is that we normally quote only upon erection of our own material.

Q. I just wondered how you happened to overlook this one in making up your table.

A. The reason for this is that this was our material. In other words, to our mind this is a part of the sale of those gates. We bid the gates. The erection was bid later. We lost the erection but we secured the gates.

Q. I am referring here to this one that you did not tabulate. I said I just wanted to find out why it was that that one was not included in your work sheets showing the bids between Consolidated and American Bridge. Was it just an inadvert-

224—327    ence or was there some classification basis for exclusion? That is what I am trying to get at.

A. Well, that was excluded because in our belief we had properly represented the fact of the sale of those gates to you. We have not bid on any other similar work, and that is something with services only. There is no other in those states in that area representing services that I know of—services without material of any sort.

Q. In this exhibit, Defendants' Exhibit 62 that was just offered here, you undertake to make a tabulation of the tonnages of the jobs on which both Consolidated and the Bridge Companies bid, did you not? Is that what that is?

A. As far as I go—

By Mr. MILLER:

Q. You did not prepare this?

A. No, we did not. We just furnished the information in the form of those work sheets to our statistical people.

By Mr. WRIGHT:

Q. I see. You had nothing to do with the tabulation yourself?

A. No, sir.

Q. Well, do you know whether you made any similar tabulations intended to show the extent to which you and other fabricators were or were not competitors?

A. No, sir. We keep an over-all check on the entire country and that is all.

224—328    Q. But as far as you know no tabulations similar to this were made as to the Bridge Companies and other competitors?

A. No.

Mr. WRIGHT. I will ask to have these abstracts of bids marked consecutively with the next plaintiff's exhibit numbers. That is, specification No. 1203 will be Exhibit No. 14; No. 1322 will be Exhibit 15; specification No. 1819-D, Exhibit 16; specification No. 1294, Exhibit 17; specification No. 1145, Exhibit 18; specification No. 1147, Exhibit 19; specification No. 1220, Exhibit 20; specification No. 1223, Exhibit 21; specification No. 1571, Exhibit 22; specification No. 1506, Exhibit 23; specification No. 1406, Exhibit No. 24; specification No. 1254, Exhibit 25; specification No. 1122, Exhibit 26; specification No. 1154, Exhibit 27; and I offer those in evidence.

(Specification No. 1203 was received in evidence and marked "Plaintiff's Exhibit No. 14.")

(Specification No. 1322 was received in evidence and marked "Plaintiff's Exhibit No. 15.")

(Specification No. 1819-D was received in evidence and marked "Plaintiff's Exhibit No. 16.")

(Specification No. 1294 was received in evidence and marked "Plaintiff's Exhibit No. 17.")

(Specification No. 1145 was received in evidence and marked "Plaintiff's Exhibit No. 18.")

224—329 (Specification No. 1147 was received in evidence and marked "Plaintiff's Exhibit No. 19.")

(Specification No. 1220 was received in evidence and marked "Plaintiff's Exhibit No. 20.")

(Specification No. 1223 was received in evidence and marked "Plaintiff's Exhibit No. 21.")

(Specification No. 1571 was received in evidence and marked "Plaintiff's Exhibit No. 22.")

(Specification No. 1506 was received in evidence and marked "Plaintiff's Exhibit No. 23.")

(Specification No. 1406 was received in evidence and marked "Plaintiff's Exhibit No. 24.")

(Specification No. 1254 was received in evidence and marked "Plaintiff's Exhibit No. 25.")

(Specification No. 1122 was received in evidence and marked "Plaintiff's Exhibit No. 26.")

(Specification No. 1154 was received in evidence and marked "Plaintiff's Exhibit No. 27.")

224—330 Redirect-examination by Mr. MILLER:

Q. Referring to these Exhibits 14 to 27, the Government exhibits, did you supply those to the Government, these documents?

A. No, sir.

Q. Do you know where they came from?

A. Yes, sir.

Q. Where?

A. Bureau of Reclamation, Denver.

Q. You didn't procure them and submit them?

A. No, sir.

Q. They check, so far as you were examined, with your own tabulations that have been put in evidence?

A. That is correct.

Q. Now, counsel called attention to the fact, or you did, in answer to his questions—

Mr. WRIGHT. Excuse me. I wondered if he did make a check on the one that was in doubt at the recess. You remember there was one we had some question about tying in because it appeared that American Bridge was the prevailing bidder on it and your tables showed Consolidated; that January 1947, bid. Did you check that to see what the story on that was?

The WITNESS. No, I didn't.

224-331 Q. You will check that?

A. Yes; we will.

Q. Well, counsel asked you if the matter of freight rate was an element in the specific bids or contracts to which he called your attention. What explanation have you to make to that?

A. The answer is that this is a very special class of work for which reason you will see we have segregated it in our job types of work. It involves considerable machine work, fitting and in many cases the work is almost of the nature of half-structural and half-machinery.

Q. Well, is it very expensive work?

A. Yes, sir. Some of those contracts were \$680 a ton.

Q. So that the percentage that the freight would bear to the total cost would be very small?

A. Inconsequential.

224-332 Q. Now, he asked you some other questions about some other specific bids and you wanted to give some explanation, I don't know what, in connection with it. Do you recall what it was? It was suggested that you defer it until redirect examination. One of them was Arizona. You said there was an explanation but you were not permitted to give it. Do you know what I mean?

A. Yes, sir.

Q. Give it.

A. One of the features of these bids for the Bureau of Reclamation is that they require a firm fixed price, whereas all commercial bids in these uncertain days are made with adjustments—with provisions for adjustments in the event of fluctuation. Now, on some of these bids that there were presented, I am quite frank to admit that our estimates as to what the adjustments required would be were incorrect, but in general the fact that they are fixed bids on a very high-class of work makes the freight angle of it very small, and you will notice that competitive bidders are very frequently machinery manufacturers located in Baltimore, such as Bartlett-Hayward Division of Koppers, located in Baltimore; Treadwell Engineering, located at Midland, Pennsylvania. On the more complicated types competition always will come from all over the country on this class of work.

Q. Is your answer complete?

224-333 A. If you would like specific examples—

Q. No; we won't take the time. Counsel can call for that if he wishes.

A. That is the answer, sir.

Q. Now, you were asked about the Fort Pitt Company in comparison with Consolidated.

A. That is correct.

Q. Have you consulted the reports of the American Institute of Steel Construction for the ten years from 1931 to 1940 for the purpose of ascertaining their comparative business?

A. I have, sir.

Q. Will you state it for the record?

A. For the ten years from 1931 to 1940—

Q. Give us Consolidated first year by year.

A. Consolidated year by year: 1931, 14,627 tons; 1932, 7,637 tons; 1933, 7,331 tons; 1934, 7,283 tons; 1935, no report; 1936, 10,369 tons; 1937, 20,659 tons; 1938, 3,332 tons; 1939, 4,831 tons; 5 mos. of 1940, 2,674 tons.

224—334 Q. Now, give Fort Pitt.

A. Might I add to this the Orange Car Company now owned by Consolidated?

Q. Yes.

A. I think that should be put in to make the comparison proper.

Q. Yes. Well, that is since 1940?

A. Yes, this is a record of the Orange Car prior to—

Q. During this period of time?

A. That is right; that is correct.

Q. Go ahead.

A. This is Orange Car & Steel Company: 1931, 2,363 tons; 1932, 500 tons; 1933, 500 tons; 1934, 500 tons; 1935, 500 tons; 1936, 1,682 tons; 1937, 1,372 tons; 1938, 1,548 tons; 9 mos. of 1939, 1,227 tons; 1940, no report.

224—335 Q. Now, give us the Fort Pitt figures.

A. Fort Pitt Bridge Works: 1931, 53,580; 1932, 46,130; 1933, 33,636; 1934, 23,900; 1935, 24,612; 1936, 50,103; 1937, 40,960; 1938, 33,030; 1939, 39,136; 1940, 24,768; total for 10 years, 369,855.

Q. Now, as I understood counsel, he asked you some questions from which he drew a deduction that Consolidated did 40,000 tons. He took a statement for a few months and determined what it would be for the year.

A. That is right. As far as we could see, he took the bookings for the first part of the year, made a guess for the remainder of the year, and then assumed that the bookings would be the production.

Q. But, as a matter of fact, are any bookings an indication?

224—336 A. That is right.

Q. And production and shipment is an entirely different thing?

A. That is right. The company may book itself solid for the next two or three years and book all the material in one year. These records are tonnages shipped as reported to the AISC.

Q. Now, in listing or classifying the concerns that compete in the structural, fabricating structural business, the three groups, the exhibit that is in evidence and particularly with reference to the first group, did you make that classification on your knowledge of the fact that the companies listed in that group were able to and did do what you have described as the most difficult, heaviest structural fabricating work?

A. Yes, sir.

Q. Did you base that classification on their ability rather than upon the actual production of any year?

A. That is right. We based it on their ability to compete on large jobs and their performance on those jobs.

Q. Now, I think you wanted to make a correction about some testimony you gave yesterday.

A. Yes, sir.

Q. Will you make it?

A. I said that, so far as I knew, Bethlehem wasn't  
221-337 engaged in plate work. I have to admit that I didn't know the full facts, that Bethlehem is engaged in a substantial amount of plate work. The reason for our lack of knowledge was that we ourselves are not engaged in plate work and don't keep fully conversant with the conditions of that industry.

Q. If you had been a plate fabricator instead of a structural fabricator could you possibly have made that mistake?

A. No, sir.

Q. You would have known whether Bethlehem was in the plate fabrication business or not?

A. I would.

Q. Now, I think you testified that Bethlehem and the U. S. Steel subsidiaries, the American Bridge Company and the Virginia Bridge Company, had about, each about, 20% more or less of the consumption of the country.

A. That is correct.

Q. And I think you gave the figure, too, didn't you? If you didn't, I will ask you to now. What percentage of the consumption of structural, fabricated structural material, in the country does the American Bridge Company or Virginia Bridge Company enjoy relatively with Bethlehem?

A. We, the American and Virginia Bridge Companies, secure about 20% of the public domestic structural tonnage.

Q. Commercial business?

221-338 A. Commercial business, as reported to AISC.

Last year—

Q. That is sufficient. I don't care for any great detail. Counsel can ask for it if he wants it. What does Bethlehem do?

A. About the same.

Mr. WRIGHT. I didn't hear the prior figure.

Mr. MILLER. 20%.

Q. Now, do you know historically, from going back over the documents or records of the Bridge Companies which, I assume, you can't know it as a fact, what the participation of the American Bridge Company was when the U. S. Steel was organization? Can you give it?

A. It was generally conceded as being approximately 44%.

Mr. WRIGHT. We object to what is generally conceded. If he knows, why, he can state. I don't think he knows what is generally conceded now.

Mr. MILLER. He doesn't go back quite as far as that.

Mr. WRIGHT. You have some records that go back—that far. Put them in.

Q. Tell counsel. He says he doesn't like the expression, "It was generally conceded."

A. I have tried to satisfy myself on the percentage, and in the dissolution case it was stated in evidence that 44% 224—339 was the American Bridge Company's capacity in relation to the industry.

Mr. WRIGHT. You are referring to the Government's testimony or defense testimony?

The WITNESS. The Government had witnesses that went up to 116%, but I perhaps better put it low. We have records going back to 1899, showing reports of bookings as reported by the Department of Commerce, and, of course, our own sales reports.

224—340 Q. What was the percentage around the period of 1909?

A. Around 33%.

Q. Now, the American Bridge Company was the only structural fabricating company of U. S. Steel when it was first organized; that is so, is it not?

A. That is so, sir.

Q. It did not acquire the Virginia Bridge until when?

A. 1936, approximately.

Q. Well, in the thirties, whatever the exact date, it was in the thirties?

A. Yes.

Q. You say that by 1909 its participation had shrunk to what?

A. Approximately 33%.

Q. And now with the addition of the participation of both the Bridge Companies, American Bridge and Virginia Bridge, it is only around 20%?

A. That is correct, sir.

Q. Now, counsel asked you about the handicap—perhaps not using that term—which the fabricators in the West suffered by reason of the fact that the rolled steel products which they con-

sumed or fabricated cost them more than such products cost the Eastern fabricators. Do you recall?

A. Yes, sir.

Q. And the fact is, perhaps you may know—I will ask you anyhow—have you known of complaints from consumers in the West that they were being discriminated against because of that fact?

A. I have not. I have not heard any such complaints.

Q. That is outside of your observation. But the fact is that if they purchased these materials on an Eastern base, the delivered price, unless some cost was absorbed, would be that base price plus the transportation charge?

A. That is correct.

Q. And this disadvantage that counsel referred to result from the fact that the plain materials purchased by the Western fabricators have to bear an added cost of transportation, just as the fabricator in the East has a larger transportation cost to ship his fabricated material to the point of delivery?

A. That is correct.

Q. Although you have not heard of any complaints of discrimination on the part of Western steel consumers because of the cost of getting the materials to them, do you know whether or not it is a fact that the Eastern steel mills during the period that I am talking about actually did—

Mr. WRIGHT: What period is that, by the way?

Mr. MILLER: What?

Mr. WRIGHT: It is not clear to me what period you are talking about.

Mr. MILLER: The period we are talking about in this lawsuit.

Mr. WRIGHT: As what?

Mr. MILLER: The period we are talking about in this lawsuit is the period I am examining the witness about.

Mr. WRIGHT: That is 1937 to 1946?

Mr. MILLER: Most decidedly. You interrupted me in the midst of a question and that gets my mind diverted from what I was going to say. I would prefer that you would wait until I have finished.

Mr. WRIGHT: I am sorry. I thought it would make the question clearer.

By Mr. MILLER:

Q. We are talking now about the period involved in this lawsuit, and that revolves around 1937 to 1946 and relates to all this data which has been produced, does it not?

A. That is right.

Q. I am asking you if you know—if you don't know, say so—that as a matter of fact the Eastern producers of rolled steel

products actually did absorb some of the freight which added to the price base would make up the delivered price? Do you know whether that is so or not?

A. That is correct.

Mr. WRIGHT. If the Court please, I don't think this witness has demonstrated any qualification to answer that question.

224—343 Mr. MILLER. He just said he knows it to be a fact.

Mr. WRIGHT. He is not in the rolled-steel business. I suppose it is a rather complex matter as to the determination of exactly what may be absorbed and what not. I should suppose the only person who could really be cross-examined about it would be somebody who actually was producing and selling rolled steel rather than someone such as this gentleman who simply is engaged in using it.

The COURT. I haven't anything to do, Mr. Wright, except to turn him over to you for cross-examination to show the incompetency of it if you want to.

By Mr. MILLER:

Q. In your business is it a part of your duty and do you make it a point to look carefully into all matters bearing upon ability to compete, the cost of material to your competitors and your own costs, and the transportation costs and everything?

A. Yes, sir. We must do that.

Q. You don't claim to be an expert on the basing point question, I take it?

A. I am not that.

Q. But you do know what and where basing points are established and what is added by the way of freight to make up delivered prices?

A. I know the principal items which enter into—

Q. I mean insofar as they involve your business.

224—344 A. Insofar as they involve my business; yes.

Mr. MILLER. But this complicated matter that counsel talks about, and it is so complicated, your Honor, that I have discovered no one during the time I have had any connection with it, that is many, many years, including those in the Government who dealt with it, who manifested any very accurate knowledge of the subject.

But this is a fact that I am asking the witness about and I am not tendering him as an expert on basing points.

By Mr. MILLER:

Q. This is what I am coming to, Mr. Obbard: Has the handicap of the Western fabricators due to their cost of plain material by reason of the heavy transportation charge been affected by the operation of the Geneva Steel Plant and how?

A. He now has a very adequate supply of rolled materials in standard sizes at a price which increases his price advantage over the Eastern manufacturer shipping into his market.

Q. Do you happen to know in dollars and cents how much the delivered price from Geneva—that is, freight added to price base—Do you happen to know how much that has actually reduced in dollars and cents the cost to the fabricator on the West Coast of his plain material?

A. He now has a freight advantage over us—

Q. How much has that reduced the cost?

A. A base and freight advantage over us of the difference between \$25.54 and \$12.89.

Q. That is not what I am asking you. I have asked you how much does the operation—You know the price at Geneva?

A. Yes.

Q. You told us that the price base was \$3 above the Eastern price?

A. That is right.

Q. You have told us what the freight was under the reduced tariff recently put into effect by the railroads. Now I ask you to tell us not the complete differential, but I want to know just how much of that is accounted for by the operation of the Geneva Steel Plant? Do you understand me?

A. Yes, sir. I would have to check the record to reduce that—

Q. Well, is it roughly at least three dollars a ton?

A. It is around three dollars a ton.

Q. What is that going to do to the American Bridge Company?

A. It is going to make our position out there quite untenable.

Mr. MILLER. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. With respect to this last statement of yours that three dollars a ton differential would make your position untenable have you made any analysis of the work that you have done in the past to determine whether or not a three-dollar-a-ton differential would have cost you a particular job or gotten it for you?

A. Our position always has been very bad.

Q. Can you just answer the question, please, first?

Mr. MILLER. I think that is a fair answer to the question.

The COURT. I think, Governor, if possible he can answer the question categorically and then any explanation he chooses. I will give the witness all the opportunity he wishes to make any explanation, of course.

A. We have made a general examination, but no detailed examination.

/By Mr. WRIGHT:

Q. Well, is the examination in any form in which anybody else can look at?

A. No, sir. I told you each contract stands on its own feet and is examined on its own merits.

Q. At the time you bid; yes.

A. At the time we bid.

Q. But for the purpose of supporting this statement you just made you have not attempted to make any analysis of the jobs bid which would show what if any effect three dollars a ton differential would have on who got the job?

A. We have made a very complete analysis which you have showing the conditions in the past. That analysis shows—

Q. Just a moment. What analysis are you referring to now?

A. The sheets of data you have.

Q. The sheets which merely show who the winning bidder was; is that right?

A. No, sir. We have gone further than that and broken the material into classifications, considered each type of material separately, and have considered what our position in the past has been on that type of material.

Q. I understand that, but this data you are referring to now that you say you gave us does not indicate on its face at all whether or not three dollars a ton or ten dollars a ton differential would have cost you a particular job or not, does it?

A. The data indicates that in the regular run of structural work we are now or have been practically out of the California market unless there are some special circumstances which make us able to compete.

224—348 Q. What date is there that you are talking about? Can you identify it by exhibit number?

Mr. MILLER. There is quite a mass of exhibits.

Mr. WRIGHT. Let us find out what the ones are that he says make this demonstration. That is all I want to know.

A. It demonstrates very clearly—

Q. I just want to know what the exhibits are that you say do this.

A. The exhibits show the types of work.

Q. Which ones are they that you are talking about? Can you just give me the numbers?

A. What is the exhibit number? 13, is that it?

Q. Yes; Exhibit 13.

A. Exhibit 13 shows that in railroad bridges we have done a substantial business and as long as we get carriers' own rates for haulage, we expect to continue with some of that business.

Exhibit 14 shows that in lightweight highway bridges fundamentally we haven't participated in the work at all.

Exhibit 15 shows that in heavy highway bridges, under certain circumstances as explained to you yesterday, we have been able to be competitive in that area; and we expect to continue to be able when special circumstances arise such as size.

224—349 On Exhibit 16 we have shown that on buildings, which are the regular run of work, which form the large bulk of the work of any manufacturer, we have been able to ship in quantity into those areas only when assisted by land-grant rates.

Q. What is the one that shows that?

A. 16 is a compilation. We explained it to you.

Q. That is Exhibit 16?

A. Yes.

Q. This Exhibit 16 is what shows that with the \$3 a ton differential you will be shut out of this business of this classification; is that right?

A. A break-down of that such as I gave you yesterday shows that on the regular run of structural work without freight advantage or—

Q. Just a minute.

Mr. MILLER. Let him finish.

Mr. WRIGHT. I want to know what he is talking about.

Q. The break-down you gave me yesterday, does that have an exhibit number?

A. Well, I think we might well take the work sheets for California as exhibiting the fact very clearly.

Q. That is the number on the back. That is Exhibit 25, isn't it, Defendants' Exhibit 25?

224—350 A. 25, that is correct.

That shows very clearly the types of work that we have been able to secure in the past, and an analysis shows very clearly that in buildings Class 4 the large quantity of our work has been for the Army and Navy and Government agencies, the Army and Navy work being ships up to last October on land-grant rates.

Q. Now, as I understand it, your position is that Exhibit 25 shows on its face that a differential of \$3 a ton would prohibit you from getting in the future the kind and character of the business that you got in the past that is tabulated there; is that right?

A. It shows that we have very little of the regular run of business there.

Q. But you have had very little of it in the past?

A. In the past.

Q. Does it show anything as to what you may expect in the future as to that business?

A. The exhibit itself doesn't look into the future. It states the facts of the past.

Q. And gives no indication at all, does it, as to how much of that business you have gotten in the past of that class you might be expected to get in the future, whether you have a \$3 a ton differential in the cost of steel or whether you don't, does it?

224—351 A. It shows we got very little in the past, and the reason was that even in those states we were laboring under a freight disadvantage.

Q. Well, now, when you say it shows that the reason was because you were laboring under a freight disadvantage, the exhibit doesn't at all show, does it, the extent to which freight entered into any of those jobs that you won or lost?

A. No, sir. You are correct there.

Q. Is there anything else you can point to which makes this demonstration that a \$3 a ton differential in the future is going to cost you business that you had in the past?

A. Well, when you have been getting very little of a certain class of business due to a freight disadvantage, it would seem logical to me to conclude that if the freight disadvantage increased you would get still less.

Q. It would seem logical to me, too, but if I understood you correctly on your last answer, you said the exhibit on its face didn't at all disclose the extent to which a freight disadvantage entered into your getting or not getting any job that is recorded there.

A. That is correct, sir.

Q. Now, is there anything else?

A. There are other classifications that we have gone briefly through. I will be glad to review them further if you like.

224—352 Q. Is there any evidence you have got that you can point to which would show what a \$3 a ton differential on the cost of rolled steel would mean in the future on business of that class?

A. Well, as I said, sir, all of this work is conducted on an individual contract basis.

Q. I think we understand that.

A. I am glad you do. The matter of whether we can bid competitively has to be considered job by job, and very often we give it very little consideration because we know that some jobs are of a nature and kind and in a location where we have not in the past been competitive; therefore, we have to use our judgment in determining whether we are competitive and whether we can go to the expense of preparing a bid.

Q. I understand that. Now, are there any exhibits which show the instances in which a decision to bid or not to bid was or was not determined by a \$3 a ton differential in the cost of steel?

A. No, sir; I couldn't show you any such exhibit.

Q. Now on this question I believe you said that in general this class 7 work that you did for the Bureau of Reclamation was high cost per ton work?

A. That is correct.

Q. Did you make any tabulations to show the average cost per ton of the jobs that are involved in your 10 or 12 job classifications?

A. No; I was speaking of the jobs which you laid before me.

Q. I understand that, but I am asking you whether or not you did make any effort or make a tabulation or examination to show the average or the cost per ton of the various job classes, the average cost per ton?

A. No, we didn't.

Q. You don't know how those run from one to the other?

A. No. I considered the jobs you showed us, and being larger jobs mostly—

Q. That is computable from the data you have?

A. Yes, it is.

Q. You can arrive at an average price per ton for each class?

A. That is correct, but there is a large amount of that stuff that goes down into the more simple class of work. It isn't all this high-priced work. This high-priced work was in the contracts that you showed me.

Q. I understand that the only way you can tell what the price, how the price, per ton of that work compares with your general work, I suppose, would be to compare it with your average price per ton on these other classes?

A. I think an average price per ton would be very misleading. The variety of material is so enormous. Trash racks, for instance, well, they have a very cheap price; 224—354—coaster gates, of which you have a photograph, have a very high price.

Q. In any event—

Mr. MILLER. You have a photograph of a coaster gate here, haven't you?

The WITNESS. Yes.

Q. All we have to tell us what the price of coaster gates is generally, I take it, is to look at the photograph. You have no figures which would show what the average price of any of these classes of work is; is that right?

A. We have the bid figures on coaster gate jobs we have been successful in securing. You can perfectly well divide the price by the tonnage.

Q. You haven't any of those figures available?

A. No.

Q. I just want to get at what we could have.

A. No, we don't use any average prices in our bidding.

Q. Now, on this question of the share of the market of U. S. Steel and Bethlehem, you gave some 20-percent figures there. Those represent what period of time?

A. With American and Virginia Bridge that has stayed fairly constant for the last 15 years, around 20%.

Q. And the same for Bethlehem?

A. I am not too familiar with Bethlehem's situation.  
224-355 Q. Now, in this West Coast, this Consolidated market,

the 11 states in which Consolidated sold substantially all of its products, do you know how Bethlehem, U. S. and Consolidated shape up there in the share of the market?

A. No, sir.

Q. You haven't any idea what those figures are?

A. No; I just keep a check on our total market.

Q. Those figures can be developed from the same source you used; that is, the American Institute of Steel Construction?

A. I presume so.

Q. On this matter of freight absorption, you testified, I believe, that during the period 1937 through 1946 your Eastern rolled steel producers were absorbing freight on the shipments they made to West Coast fabricators?

A. What was the period you stated?

Q. 1937 through 1946.

A. I am not familiar with the war years.

Q. You don't actually know what was happening then during that period with respect to freight absorption by rolled steel producers?

A. No. The part before the war.

Q. What is the period you know about?

Mr. MILLER. He said the part before the war.

Q. That would be 1937 through 1940?

A. 1937 through 1940.

224-356 Q. During that period, you know, do you, that on the shipments made by Eastern rolled steel producers to the Western fabricators, the Eastern producers were absorbing freight?

A. Yes, sir; they were.

Q. How much of the time and what proportion of their business?

A. I couldn't say. All that I am interested in is the competitive prices I have to quote against.

224-357 Q. All you know is that in some instances and at some time they would absorb some freight to get a particular job; is that right?

A. No. There were listed prices listed in the Iron Age showing perfectly clearly what the prices for these materials were.

Q. Well, listed prices—

By Mr. MILLER:

Q. Had you finished your answer?

A. Yes, sir.

By Mr. WRIGHT:

Q. Well, the listed prices during the period, I take it, were the Eastern base prices plus freight; isn't that correct?

A. I am no freight expert. All I was interested in was the price of materials.

Q. You are just talking about listed prices. Do you know what they were?

A. I don't know the make-up of the prices. I was interested in the prices which competitors would use in quoting upon jobs.

Q. Well, if you don't know the make-up of the prices you don't know whether freight was absorbed or not, do you?

A. The published prices at California points, that is what we used.

Q. Can you answer my question?

224—358

A. Perhaps you will restate it for me.

(The pending question was read by the reporter as follows:)

“Q. Well, if you don't know the make-up of the prices you don't know whether freight was absorbed or not, do you?”

A. Well, it was clear that the prices—

Q. Can you answer that yes or no?

Mr. MILLER. Counsel doesn't intend to, but when he doesn't like an answer he stops him by breaking in.

The COURT I think I may tell the witness that while what we prefer is a categorical answer, I don't want to stop him from any explanation of that answer.

By the COURT:

Q. Do you understand that, Mr. Obbard?

A. Yes, sir.

Q. Any time you want to explain an answer you are at perfect liberty to do so and can insist on it.

Do you understand this precise question?

A. I would like to have it restated.

(The pending question was reread by the reporter.)

A. I know that the prices were less than the prices of the material at the mills where we secured the steel plus the commercial rates.

By Mr. WRIGHT:

Q. What prices are you referring to there when you say “the prices”? Are you talking about the prices at which you bought rolled steel?

224—359

A. Yes, sir.

Q. As to what the other fabricators paid you are not in a position to say, I suppose, are you? At least they are in a better position to say than you would be?

A. That is correct.

Q. I take it these complaints of Western fabricators about which you have heard nothing were in general to the effect, were they not, that they had to pay a price for rolled steel delivered there to them from a plant a few miles away which was just as high as the price of the steel at an Eastern base plus freight to the Coast?

Mr. MILLER. How can he tell about complaints of which in your own question you assume he has never heard?

Mr. WRIGHT. Well, you asked him about the complaints of discrimination.

Mr. MILLER. He said he didn't know about it.

By Mr. WRIGHT:

Q. You know nothing about that?

A. I certainly don't.

Q. You don't know whether it was a fact or whether it was not that independent fabricators on the Coast there did as a result of the basing point system then in effect have to pay for steel delivered there to them from a California mill a price which was the equivalent of the Eastern base price plus freight to the Coast? That you are without knowl-

edge of?

A. I am without knowledge.

Q. You are also without knowledge, are you not, as to the extent to which those Western fabricators still today have to pay a price for rolled steel which they get from a California mill which is equal to the Geneva base price plus freight from Geneva to California; is that right?

A. I am without knowledge of it. As I said, our business there is inconsequential and there is no reason why I should have any deep knowledge of it.

Q. One thing more: These figures you gave us on Fort Pitt and Consolidated and this Orange Company you just read those out of the A. I. S. C. report?

A. That is the A. I. S. C. report on tonnages shipped.

Q. Did Western Pipe & Steel make any reports to the Institute for those years?

A. They did not report, but from what little I know of their operations their structural tonnage was inconsequential.

Q. Well, how much do you know of their operations?

A. Oh, I have been in their plants some time back.

Q. Well, in any event, insofar as the Institute figures are concerned they don't purport to reflect what Western Pipe & Steel or Steel Tank & Pipe did at all?

A. That is right.

224-361 Q. And, of course, they would only reflect the business of Consolidated of Texas beginning in 1940, because that is when that corporation became affiliated?

A. That was the reason for our quoting you the figures on the Orange Car & Foundry.

Q. Yes, I understand you gave us the figures on the Orange plant which Consolidated of Texas bought, but insofar as the situation from 1940 on when Consolidated of Texas became a part of Consolidated of Los Angeles is concerned you have nothing there to indicate that?

A. No, sir.

Q. And you have no figures there to show the situation beginning in 1945 after Consolidated acquired Western Pipe & Steel?

A. The entire situation in the structural industry from 1941 to the present is really a war situation.

Q. Well, in any event—

A. That was the reason we went back to these figures.

Q. In any event, it is omitted from your calculation completely?

A. That is right.

Q. And I take it all of these figures were national figures?

A. That is correct.

224-362 Q. By the way, it is a fact, is it not, that none of these Western fabricators are actually able to sell in your Eastern or Midwestern market at all, are they? You don't encounter their competition there?

A. Not to a very large extent.

Q. Well, to any extent?

A. By "Western" do you mean within the eleven states?

Q. Has Consolidated or any of its subsidiaries ever competed successfully on a job with you outside of the 11-state area?

A. Some of the companies in the eleven states certainly have I cited Mosher.

Q. Can you answer the question on Consolidated?

A. Consolidated not to my knowledge.

Q. That is true in general of all of these California fabricators certainly, isn't it?

A. Oh, yes.

Q. But when you get over into Texas some of those fabricators are able to move over into what? East of the Mississippi?

A. No; not too far away.

Q. You don't have any of them competing with you east of the Mississippi at all, do you?

A. No; there is only one big fabricator in Texas and that is the Mosher Steel Company.

Mr. WRIGHT. That is all.

224-363

Redirect examination by Mr. MILLER:

Q. I have one question: Do these trade publications like Iron Age publish the delivered prices?

A. Iron Age?

Q. Yes.

A. Yes, sir.

Q. If you know what the delivered price is and the price base is, can you easily determine how much is transportation?

A. Yes.

Mr. MILLER. That is all.

Mr. WRIGHT. I am sorry, there is one thing I forgot. That was this question we left open as to the work sheets on the table of the land-grant rates, Exhibit 35. I talked to these gentlemen over here and I think we can clear that up either through this witness or one of them.

Re-cross-examination by Mr. WRIGHT:

Q. The figures I questioned you about before was this percentage of total tonnage which you said moved on land-grant rates, and I understand your testimony to be that you had taken the tonnage that moved on Government rates that was shipped to the Government on Government projects, and then assumed that all of that tonnage did move on land-grant rates; is that correct? That was the method of computation?

A. Yes, sir; I think I so stated.

Q. And you made that assumption that all of the shipments to the Government moved at land-grant rates even with respect to the period of 1941 through 1946, after the land-grant rates had been abolished on everything except the Army and Navy; is that right?

A. That is correct. Of course, that period is not really a representative period. It was the war years and scarcity rather than anything else—

Mr. WRIGHT. That is all.

By Mr. MILLER:

Q. Finish your sentence.

A. Made the sale.

Mr. WRIGHT. That is all.

Mr. FINGER. May it please the Court, in connection with Defendants' Exhibits 37 to 63, both inclusive, that we introduced this morning, we had an understanding with Mr. Wright that we would submit for cross-examination witnesses under whose general direction these respective exhibits were prepared.

In pursuance of that understanding we shall now call a witness from U. S. Steel; second, a representative from Consolidated, and third, a representative of Ford, Bacon and Davis,

224-365 who together will be able to answer questions with respect to all of the exhibits in the aggregate.

I shall first call Mr. Stringfield.

The COURT. I didn't know whether Mr. Wright has seen the exhibits.

Mr. WRIGHT. Oh, yes; we have seen them. It might be possible to shorten this up by getting together at noon and just agreeing on some statements that went in with these exhibits.

Mr. MILLER. They will meet with you and see if you can.

The COURT. It is my experience that if you get a witness on the stand and examine him and cross-examine him it takes so much longer than if you agree on what he will say.

Mr. FINGER. The direct examination will not be over five minutes.

The COURT. Would you prefer to take a recess at this time?

Mr. MILLER. I think it would be a good idea.

The COURT. It is a quarter of one now. We will recess to two-fifteen.

(At this point recess was taken until two-fifteen o'clock p. m., the same day.)

224-366 Two-fifteen o'clock p. m., the same day.

Present: As before noted.

Mr. WRIGHT. If the Court please, I thought we would first simply read into the record what we were able to agree upon during the recess here as to these exhibits.

We waive any cross-examination on Defendants' Exhibit 37, and the same is true as to Defendants' Exhibit 38.

The only comment we wish to note as to Defendants' Exhibit 39 is that the table excludes the inter-company sales of the Corporation, and the same is true as to Defendants' Exhibit 40.

We waive cross-examination as to Defendants' Exhibit 41.

As to Defendants' Exhibit 42, which is an estimated Steel Industry Distribution of Plates, Shapes, Sheets, and Bars for the year 1937, we understand that the witness preparing it, if called, would testify that no figures are available for any other year of this kind and that it is impossible to prepare such a table for any year subsequent to 1937.

As to Defendants' Exhibit 43, we desire to examine 224-367 the man. He will take the stand after we get through.

As to Defendants' Exhibit 44, Consolidated Steel Corporation Subsidiary Summary of Purchases of Rolled Steel Products, from U. S. Steel Subsidiary and Others by Years from 1937 through 1946, the gentleman from Consolidated who prepared that has undertaken to supply us with an additional table which will show those purchases broken down in accordance with the classifications which appear on Defendants' Exhibit 42.

As to Defendants' Exhibit 45, we waive cross-examination, and the same, I believe, is true as to their Exhibit 46 and their Exhibit 47 and their Exhibit 48.

Now, as to Defendants' Exhibit 49, which is the "Consolidated Steel Corporation and Subsidiaries Fabricated Structural Steel Bookings for Shipment into the 11 States, Type of Products Reported by the American Institute of Steel Construction," there is on there this 8-months figure for 1946. They have only the first eight months. We have asked the gentleman who prepared the table for the data as to the bookings for the remaining months of 1946 or the best estimate that he can give us, and we understand an effort will be made to produce that within the next few days.

As to Defendants' Exhibit 50, "U. S. Steel and Consolidated, Compared with Industry Fabricated Structural Steel 224-368 Bookings for Shipment into the 11 States, Type of Products Reported by the American Institute of Steel Construction" the table here shows the comparison in question only for the years 1937 through 1942. For the years 1943 through 1946 they show only the U. S. Steel and the Consolidated structural bookings in the area, and we understand the reason for that is that the Institute itself did not for those years make a computation of the respect tonnages of the reporting people that went into those areas. However, we also understand the fact that the Institute maintained during those years the same type of records showing destinations of the various shipments that were reported by the structural fabricators, so that a similar figure for total shipments into the area could have been prepared for the years 1943 through 1946 from the data available at the Institute.

Mr. BLOUGH. I want to make a comment on Mr. Wright's last remarks. It may be true that such data exists. If it does we do not have it and it has not been made available to us.

Mr. WRIGHT. Well now, I take it there is no claim here, is there, that you requested such data from the Institute and they refused it to you?

Mr. BLOUGH. We requested the breakdown of the shipments into the eleven States and they furnished shipments for the years 1937, 1938, 1939, 1940, 1941, and 1942, but for none of the years after that time.

224-369 Mr. WRIGHT. And you didn't make any request to examine the actual reports of shipments for the subsequent years from which break-down was made in the prior years; is that right?

Mr. BLOUGH. My understanding is that the Institute did not keep that data. It wasn't available to us. If you can show, in some fashion, what that is, all good and well.

Mr. WRIGHT. The Defendants' Exhibit 51 is one for which we waive cross-examination.

Defendants' Exhibit 52, the same applies, and that is true of Defendants' Exhibits 53, 54, 55, 56, 57, 58, 59 and 60.

As to Defendants' Exhibit 61, which involved some census figures, we are still having those checked and we may have something on that a little later.

We waive cross-examination as to Defendants' Exhibit 62 and as to Defendants' Exhibit 63. That, I think, completes the list.

The Court. Did I understand from that that you desire cross-examination only on Defendants' Exhibit 43?

Mr. WRIGHT. Yes.

WILLIAM T. COLLINS, called as a witness on behalf of the Defendants, being duly sworn, testified as follows:

224-370 Direct examination by Mr. FINGER:

Q. Will you state your name, please?

A. William T. Collins.

Q. Mr. Collins, where do you reside?

A. I reside at Neshanic, New Jersey.

Q. What is your age?

A. 44.

Q. By whom are you employed?

A. Ford, Bacon & Davis, Incorporated.

Q. In what capacity?

A. I am an economist, and my position is Senior Sales and Market Analyst.

Q. Will you please state your education and experience?

A. I did my undergraduate work at Dartmouth College. I did graduate work at the University of Toronto.

Q. Did you graduate from Dartmouth College?

A. Yes, sir; in 1926.

Q. With what degree?

A. B.S.

Q. Continue with your graduate work that you did.

A. I did graduate work at the University of Toronto in 1927.

224-371 I got my Master's there. The next year I did graduate work at the Massachusetts Institute of Technology, and the last year of my graduate work was at the Harvard Business School of Administration.

Q. After completing your education, as you have detailed it, will you state what business experience you have had?

A. For 10 years I was the Assistant Economist of R. H. Macy & Company, in New York, in the years 1931 to 1941.

During the war I was assistant to the assistant to the President of the Chemical Construction Corporation, a subsidiary of the American Cyanamid Corporation.

Q. During your first 10 years with R. H. Macy & Company, will you state just, in a general way, the nature of the work that you did without going too much into detail?

A. As I said, I was Assistant Economist and that work primarily involved a study of general business conditions, markets, sales, analysis, sales forecasts, and general policy studies having to do with economic problems.

Q. After that employment where were you? You started to say that during the war you were with whom?

A. Chemical Construction Corporation.

Q. Which, you said, is a wholly owned subsidiary of American Cyanamid Corporation?

A. A wholly owned subsidiary of American Cyanamid Corporation.

Q. What was the nature of the work you did there?

224-372 A. I was assistant to the assistant of the President of that subsidiary, and the main objective of the work was to control the company's war contracts. It was primarily financial and statistical.

224-373 Q. That service covered what period?

A. With American Cyanamid subsidiary?

Q. Yes.

A. December 1941 to June 1943.

Q. And since 1943 to the present time with whom have you been associated?

A. Ford, Bacon and Davis, Incorporated.

Q. Will you state for the record just very briefly the nature of the business of Ford, Bacon and Davis?

A. Ford, Bacon and Davis, as I stated, is an engineering firm primarily engaged in consulting work. Do you want to know more than that about Ford, Bacon and Davis?

Q. Well, I think that is sufficient for the present at least.

What has been the nature of the service that you have performed for Ford, Bacon and Davis?

A. For Ford, Bacon and Davis' clients I have primarily been engaged on economic studies, business studies, for clients particularly having to do with the sales and marketing aspects.

Q. Has that service continued from 1943 down to the present time?

A. Yes, sir; uninterruptedly.

Q. Did you prepare the compilation which is in evidence here as Defendants' Exhibit No. 43?

224-374 A. I believe so. I haven't seen it with a number on it, but I imagine that is the one.

Q. Is this the one (handing a paper to the witness)?

A. Yes, sir.

Q. Is this compilation correct to the best of your skill, knowledge and understanding subject to the explanations and the comments that are contained on the face of the statement?

A. May I have the question again, please?

(The last question was read by the reporter.)

A. I believe they are, except for the possibility of clerical errors in calculation.

Q. Are there any such errors so far as you know?

A. Not that I know of. If there were I would have corrected them.

Mr. FINGER. Cross-examine.

Cross-examination by Mr. WRIGHT.

Q. This Exhibit 43 that you refer to purports to show apparent consumption of all steel-mill products in the eleven States we are interested in here from 1937 through 1946; is that right?

A. That is what it says.

Q. And notice that 1946 says "Preliminary." What does that mean?

A. The word "preliminary" there means that all of the data that were available for prior years were not available 224—375 for prior years were not available for the complete year 1946. Some of the data for 1946 were complete and some were not, which means that we had to estimate in some cases for the last half of the year.

Q. Well, the word "preliminary" suggested to me that maybe you were going to come up with something final.

A. That is an unfortunate choice of the word "preliminary." It probably should have said "estimated."

Q. "Tentative" would be better?

A. Yes, or estimated.

Q. You have nothing later or better for that year than what you have got?

A. Not at the moment; no, sir.

Q. On this table that you have made up you have this column that says F. B. & D. That refers to your company?

A. Yes.

Q. That is your report for the year in question for seven of the States; is that right? Which seven are those? Oh, they are stated in the footnote. I beg your pardon.

A. There are three Pacific States and the four desert States.

Q. The figures for all the eleven States under the column F. B. & D. represent the estimate for that year prepared by your company?

A. That is right, sir.

224—376 Q. And you have a sheet, have you not, which shows an analysis of how you arrive at the consumption figure that you have set out there for each of those years?

A. Are you talking about the years 1940 on?

Q. I am talking about 1937 all the way through. I beg your pardon. I see you have no figure for 1937, do you?

A. It was not quite clear to me whether you wanted to use our figures for 1937, 1938, and 1939 or not. I am willing to use them or not as you see fit. I think they are good figures.

Q. You do have a figure for 1937 but you left it out of the table?

A. We did, yes, sir; and I can tell you the reason why.

Q. Well, what is the reason why it was left out?

A. In the years 1937, 1938, and 1939 the movement by rail of freight into and out of these territories was not published by the Interstate Commerce Commission. The figures that we used were obtained from data that was taken from work sheets of the various State Public Service Commissions, and we did not have the supporting data to back up those years 1937 and 1938; but from looking at the data and the I. C. C. figures for the subsequent years I assume that it is very good data.

Q. Have you got a copy of your 1937 sheet there that shows whatever you computed for 1937?

A. Yes, sir; I do.

224—377 Q. Your first item there is production of hot-rolled iron and steel products and then you show opposite that the figures representing the production of those products in the states of the eleven where such production occurred.

A. Are you talking about 1937 now, sir?

Q. Yes.

A. We only did seven states in 1937. The railroad data for three of the other four states were not available.

Q. You have no figure, then, of any kind for 1937 in the whole eleven states?

A. Not in the eleven states. In the seven states only.

Q. We will pass that. The first figure you have for the eleven states, then, is your 1938 figure; is that right? Or is that also for seven states?

A. By the method that you refer to? I think it would be easier, if I may suggest so, to take the year 1940 and then go back to 1938 and 1939, and I will show you how that was derived.

Q. All right. You have a sheet there showing your computation for the year 1940?

A. Yes, sir.

Q. There your first item is the production of hot-rolled iron and steel products in the eleven states where there was such production; is that right?

A. Yes, sir; the first row at the top indicates hot-rolled iron and steel production.

224-378 Q. That is taken from the reports on file at the American Iron & Steel Institute?

A. In some instances yes, and in some instances you will notice that the figures are estimated by us. For instance, the State of Washington that are estimated are not exactly shown that way by the Institute. The same will apply to Texas.

Q. Can you tell us the basis for your estimates or how you got it there?

A. Yes, sir; I can. For example, in the State of Washington in the year 1940, at which we are looking, the Institute figures combined Colorado and Washington production. The objective was to delete from the published figures the figures for the State of Colorado. That is possible because the only producer in that state of these products at this time was the Colorado Fuel & Iron Company, and fortunately that company publishes annual reports in which it shows its sale in that year of its iron and steel products in tons. I should have said their annual reports are for fiscal years ending in June 30th each year. These figures, you will notice, are on a calendar year basis.

In order to take the figures over from the fiscal year basis to a calendar year basis, we used their report to the Securities and Exchange Commission with which they filed a registration statement. In that report they show their ingot production in tons on a calendar year basis, and by that method we were able to determine their production and sale of these production on a calendar year basis and subtracted them from the total years of the American Iron & Steel Institute to arrive at a figure for Washington.

Q. Your next item there is I. C. C. Revenue Freight Terminated. Can you tell us what that means?

A. Yes, sir. The Interstate Commerce Commission publishes a set of data showing the tons of revenue freight originating and terminating by states on Class 1 steam railroads. I think it is called M-550 of the I. C. C. These figures are taken from that publication.

Q. Now, those figures that you just referred to don't tell you anything about where the terminated freight originated, do they?

A. No, sir; they don't.

Q. And they don't tell you anything about where the freight originated there terminated, do they?

A. No, sir; they don't.

Q. And those figures, I take it, were filed really with the Commission for revenue purposes, were they not?

A. No, I believe statistical purposes.

Q. Well, you know, don't you, that they were filed for the purpose of determining what the actual consumption of any commodity was in any state? Don't you know that?

224-380 A. They never told me so.

Q. Well, do you know that? Is it your impression they were filed for that purpose?

A. Are you asking me why they published the statistics?

Q. I am asking you what the purpose of the figures that you are talking about here filed by the railroads was. Do you know why they were filed with the Commission in that form?

A. These were published by the Commission in this form, not filed in this form.

Q. I take it the publication of the Commission is a summary of the data filed with the Commission by the Class 1 railroads; is that correct?

A. I believe so.

Q. Now, do you know for what purpose the Class 1 railroads filed this data with the Commission?

A. You mean do I know what the Commission's purpose was in asking for it?

Q. Either in asking for it or having the railroads file it.

A. No, sir; I don't know what the reasons were the Commission had in asking for the statistics.

Q. Do you know why they were filed; what their purpose was?

A. On the face of it, on the face of the statistical data as published, it states it is Revenue Freight Originated  
224-381 and Terminated by Geographical Divisions by Commodity Classifications.

Q. I understand that is what it is, but do you yourself know what the purpose of the railroads in filing that data was; why they file it or why the Commission collects it?

The COURT. May I ask a question?

Mr. WRIGHT. Yes.

The COURT. Is there a ruling requiring them to file it?

Mr. WRIGHT. I am afraid you will have to ask the witness. I can't tell you whether there is or is not.

The COURT. That might be a reason why they file it, and not why the Commission asks for it.

Mr. WRIGHT. I think that may be possible, your Honor. Frankly, I don't know.

Mr. FINGER. They filed it because the Commission required it.

Mr. WRIGHT. I am asking information on that point.

The COURT. I see. Possibly we are asking for information on the same point.

By Mr. WRIGHT:

Q. Do you know whether those reports were required by some Commission order or some statute or something of that sort?

A. From the railroads?

224-382 Q. Yes.

A. I know that the I. C. C. ordered the railroads to supply the data. Yes, I do.

Q. Can you refer us to the order? I suppose the order might throw some light on the purpose.

A. No, sir; I can't refer to the order.

Q. You don't know what the purpose of the filing was, then?

A. Except to supply information as to the railroad freight terminated and originated.

Q. But as to why they filed that data or why the Commission wanted it, you don't know; is that right?

A. I beg your pardon. Why the Commission wanted it?

Q. Yes.

A. For what purpose?

Q. Yes.

A. No, sir; I don't.

Q. Now, those freight classifications that you refer to there, can you read into the record or furnish us with a description of the commodities that are included in each class?

A. Yes, I have a classification here. Which classification did you want?

Q. The ones you have used here. Why don't you take them in order and simply read what those classes are?

A. Do you want me to do that, or do you want to put 224-383 those in? It is a rather long description of 513.

Q. Well, have you got them in convenient form, something that can be marked as an exhibit and put in?

A. I have it exactly as I received it from the I. C. C.

Q. If you can detach that we can just mark that and use it as an explanatory exhibit. This has got all of the commodity classifications of the Commission. The only ones I asked you about were those you have on your table here, your Classes 500, 511, 512, and 513.

A. They are in there; yes, sir.

Q. I don't think that there is any need to put in the whole commodity classification table. If you have the others in convenient form, all right. If not, I think it will be better to read into the record the four classes that are involved in your tabulation.

A. You mean a complete description of them?

Q. Yes.

The COURT. Which is 513?

The WITNESS. Right here, sir.

The COURT. Do you want to read it into the record? 513 consists of about 60 or 70 lines.

Mr. WRIGHT. I would suggest that if we can stipulate that it may be regarded as having been read into the record, then we can give it to the reporter and let him copy it in afterwards.

224—384 The COURT. 500, 511, and 512 are comparatively short. They are only three or four lines.

Mr. WRIGHT. Well, if it may be agreed that 500, 511, 512, and 513 may be read into the record, I think that will dispose of it.

The COURT. Is that satisfactory?

Mr. MILLER. Quite.

"500. Rails, fastenings, frogs, and switches. Angle-Bars (Railway); Angle Plates (Railway); Crossovers, Railway; Derailers, Railway, Iron or Steel; Fish Plates; Nut Locks (Railway); Rail Anti-Creepers; Rail Anchors; Rail Braces; Rail Fastenings, N. O. I. B. N.; Rail Frogs; Rail Joints; Rails, Iron or Steel; Rail Spikes; Rail Splice Bars; Rail Stays; Railway Track Turnouts, Iron or Steel; Railway Track Welder Bars; Rail Yokes; Steel Ties, Railway; Switch Points, Railway; Switch Targets, Railway; Switches, Railway; Tie Bolts, Railway; Tie Plates, Railway; Tie Rods, Railway; Track Bolts, Railway; Track Nuts, Railway; Track Washers, Railway."

A. "511. Iron and steel pipe and fittings, N. O. S. Conduits, Wrought Iron or Steel; Pipe Connections, Iron or Steel, N. O. I. B. N.; Pipe Couplings, Iron and Steel, N. O. I. B. N.; Pipe Hangers, Iron or Steel, N. O. I. B. N.; Pipe Rings, Iron or Steel, N. O. I. B. N.; Pipe Supports, Iron or Steel, N. O. I. B. N.; Pipe, Wrought Iron or Steel; Tubing, Seamless Steel.

"512. Iron and steel: nails and wire, not woven. Acid Coppered Iron or Steel Wire, not Woven; Barbed Wire, Iron or Steel; Galvanized Iron or Steel Wire, not Woven; Horseshoe Nails, Iron or Steel; Nails, Iron or Steel, N. O. I. B. N.; Painted Iron or Steel Wire, not Woven; Plain Iron or Steel Wire, not Woven; Spikes, Iron or Steel, N. O. I. B. N.; Staples, Iron or Steel; Tinned Iron or Steel Wire, not Woven; Wire, Iron or Steel, Not woven, N. O. I. B. N.

"513. Iron and steel, rated 5th class in Official Classification, N. O. S. (also tin and terne plate).

"Angles, Iron or Steel; Arches, Floor, Iron or Steel; Band or Hoop Iron or Steel; Bands or Rods, Iron or Steel, N. O. I. B. N.; Bars, Sheet or Tin Plate, Iron or Steel; Bars, N. O. I. B. N., Iron or Steel; Bars or Rods, Iron or Steel, Copper, Brass, or Bronze Coated; Bases or Shoes, Structural, Iron or Steel; Beams, Iron or Steel; Billets, Iron or Steel, Copper Clad; Blanks, Iron or Steel, Rough; Bodies, Oil-Well Reamer or Socket, Unfinished, Iron or Steel; Braces or

Buckets, Structural, Iron or Steel; Bumpers, Iron or Steel (Not Automobile); Caps or Capitals, Structural, Iron or Steel; Castings in the Rough, Iron or Steel; Channels, Iron or Steel; Columns, Iron or Steel; Concrete Reinforcement Bars, Iron or Steel; Crank Shafts, Unfinished, Iron or Steel; Cylinders, Creosoting, Steel Plate; Flumes, Knocked-down Nested, Iron or Steel; Foot Walks, Structural Iron or Steel; Forgings, N. O. I. B. N., Iron or Steel, in the Rough; Girders, Iron or Steel; Inserts, Structural, Iron or Steel; Lag Bolts or Lag Screws, Iron or Steel; Lathing or Ribbing, Expanded Metal, Iron or Steel; Lintels, Iron or Steel; Pebbles, Grinding or Polishing, Iron or Steel; Piling, Iron or Steel; Pins, Bridge or Drift, Iron or Steel; Pipe Billet Tubing, Iron or Steel; Plate, Armor or Deck, Nail or Tack, Iron or Steel; Plate or Sheet, Iron or Steel, N. O. I. B. N., Black Iron; Plate or Sheet, Iron or Steel, N. I. O. B. N., Corrugated; Plate or Sheet, Iron or Steel, N. O. I. B. N., Galvanized or Plain; Plates, Floor, Iron or Steel; Plates, Structural, Iron or Steel; Poles, Electric Wire, 224-386 Iron or Steel; Poles, Trolley, Plain, Iron or Steel; Posts, Iron or Steel, N. O. I. B. N.; Props (Supports), Mine, Iron or Steel; Rails, Other than Railway, Iron or Steel; Rings, Rolled, Iron or Steel; Rods, Tie, Structural, Iron or Steel; Roofing, Tin or Terne; Rope or Guy Wire Fittings, viz., Clamps, Clips, Sockets, or Thimbles, Iron or Steel; Scrap Iron or Steel; Copper Clad; Separators, Structural, Iron or Steel; Shafts or Shafting, Iron or Steel (Not Crank Shafts); Sheet Iron or Steel; Aluminum or Lead Coated; Sills, Door or Window, Iron or Steel; Skelp, Iron or Steel; Spiegel-Eisen (Spiegel-Iron); Stampings, Iron or Steel, Rough; Staples, Ingot Mould, Iron or Steel; Steel, Chilled, Crushed or Granulated; Strip Steel; Structural Forms, Iron or Steel, N. O. I. B. N.; Struts, Structural, Iron or Steel; Studding or Furring, Iron or Steel; Studding Sockets, Iron or Steel; Sucker Rods, Iron or Steel; Tees, Iron or Steel, Terne Plate; Tin Plate; Trusses, Iron or Steel; Unfinished Shapes, Iron or Steel, Rough; Wire Rods or Chain, Iron or Steel; Zees, Iron or Steel.

224-387 Q. Now, the item "Coastwise receipts and coastwise shipments," those figures are computed how?

A. They were taken from the annual reports of the Chief of Engineers of the United States Army, Part 2, Statistical Summary of Water-Borne Commerce of the United States.

Q. Do those reports of the Army Engineers indicate the point of origin of the receipts or the destination of the shipments?

A. For the data that we are using here, you mean?

Q. Yes.

A. They only show the receipts at a port or shipments at a port. They do not show from where it came.

Q. Or where it is going?

A. No; these are coastwise. You will notice, though, from the Army-Engineers' report that shipments to Alaska and Hawaii are treated as coastwise in coastwise receipts or shipments.

Q. So that the coastwise shipments may either come from or go to Alaska as well as other coast—

A. Or Hawaii or other parts of the United States coast. These do not include either foreign exports or imports.

Q. You have another item there for foreign imports and foreign exports. Those, I take it, you got from the Department of Commerce?

A. Yes, sir; the Bureau of Foreign and Domestic Commerce.

224—388 The COURT. May I ask a question?

By the COURT:

Q. As to the coastwise receipts what do you mean by the receipts as broken down to the eleven states? Are those received in the eleven states?

A. Yes, sir, those received at the ports in these eleven states.

Q. In the eleven states?

A. That is right. They are done by states and by ports.

Q. But they don't show from where they came?

A. No, sir; they do not. They show that they arrived there.

Q. The receipts coastwise in the eleven states?

A. That is right.

The COURT. Thank you.

By Mr. WRIGHT:

Q. The same is true as to your coastwise shipments. They simply show that they originated in one or more of the eleven states. They don't show where they went; is that right?

A. That shows that they left the port of that state.

Q. The Internal Waterways, your testimony is the same as to those as to the coastwise receipts and shipments?

A. I don't know whether I would say exactly that, but I could tell you about those.

Q. You don't seem to have any on this chart anyway.

224—389 A. They are only for the State of Texas and Louisiana. There were no internal waterways movements on the West Coast. These movements are down the Mississippi River and into the states of Louisiana and Texas, or they come along the intercoastal waterways from Mobile into Texas or Louisiana or out.

Q. But do these reports that you took them from indicate the points of origin and the receipts or the destinations of the shipments?

A. No, sir; they do not.

Q. Then, as I understand, you compute your apparent consumption by adding, that is in any particular state, the total production in the state plus what you call total in shipments and then deducting from that total figure of production plus the in-shipments the total out-shipments; is that right?

A. That is right.

Q. Now, that same method was pursued in preparing the data for all the other years, wasn't it?

A. Through 1945; yes, sir.

Q. You used the same freight classifications and the same supporting data all the way through?

A. That is right.

Q. This data, I take it, includes all shipments whether they are intercompany or otherwise; is that correct?

A. Are you referring to I. C. C., for instance, or the coastwise shipments?

224-390 Q. Well, all the data. That is, you have not attempted to eliminate from this table those shipments that might have been made from one subsidiary of the Steel Corporation to another or one subsidiary of Bethlehem Steel Company to another; is that right?

A. That is right. But I don't think that would have any bearing upon the measurement of the apparent consumption in this market.

Q. Yes. Your figure or your consumption figure, I take it, would be a larger figure than any figure which purported to show the extent of the market for any particular kind of steel products?

A. No, sir, I don't think that is so.

Q. Well, insofar as the shipments intercompany are concerned, those shipments would all show up here and might increase your total consumption figure and yet they would not represent any increase at all or any fair reflection of what we might call competitive consumption of steel—that is, the steel used by consumers who would purchase the steel competitively rather than from some other concern which was tied to them by affiliation or stock control?

A. Do you want me to answer that question? Is that a question?

Q. Yes.

A. I think that is fallacious reasoning. I don't see 224-391 any justification for the assumption that you make.

A. Well, whether it is fallacious reasoning or not, in any event the table that you have got here doesn't on its face enable anyone to determine how much of this consumption represents consumption by people who purchased their steel competitively or by those who may purchase it from some affiliated source of supply.

The Court. Haven't we gotten the answer to that question?

By the COURT:

Q. As I understand, there is no differentiation made between, if I may call it that, an import into one of these eleven states from an affiliated company outside? It doesn't pretend or purport to show that?

A. No, sir; and I don't think it makes any difference to the calculation whether between one or the other.

The COURT. Of course, we don't propose to get into an argument on that. It does not purport to show, Mr. Wright.

Mr. WRIGHT. Correct.

By Mr. WRIGHT:

Q. It also, I take it, does not purport to show the actual movement from identified points of steel at all because of the fact that you don't have any destination points for your shipments or any points of origination for your termination; isn't that right?

224-392 A. I am afraid I don't understand the question.

The COURT. I didn't quite catch the first part. The last part I understood.

(The last question was read by the reporter as follows:)

Q. It also, I take it, does not purport to show the actual movement from identified points of steel at all because of the fact that you don't have any destination points for your shipments or any points of origination for your termination; isn't that right?"

The WITNESS. Will you read me the first part of it again and I will try to answer that first.

(The last question was re-read by the reporter as follows:)

Q. It also, I take it, does not purport to show the actual movement from identified points of steel at all?"

A. It does not.

Q. Movement between identified points?

A. It does not; no, sir.

Q. And for that reason your consumption figure may be blown up somewhat, may it not, by a series of movements within the territory there or within a state?

A. No, sir; it would not. What would happen—are you visualizing, for instance, a shipment originating in California and terminating in California? Is that what you have in mind?

224-393 Q. Yes. I am thinking of more than that. I am thinking of a situation where there may be several shipments of the same material in the same state at successive stages of manufacture.

A. You would realize on a situation like that that each origination would wash the termination and so would not appear in the final apparent consumption figure. It may raise the "in" move-

ment and bound to raise the "out" movement, but the net would remain the same.

Q. That is assuming your tonnages remained the same at all stages of manufacture?

A. We are not talking about manufactured products here, sir. We are only talking about the products in these classifications. We are not going farther than that.

Q. Let me put this situation to you: In certain cases your rolled steel tonnage may move on a rolled steel rate after it has acquired a fabricated form because of certain fabrication in transit privileges; isn't that right?

A. Are you referring to something coming from outside the territory or inside?

Q. Outside and inside.

A. I am afraid I don't know—I can't answer that question. I don't know anything about it.

Q. Well, some of these products that you have got here are consumed in this way: That is, they are taken by one consumer and then they are manufactured into a form which falls  
224—394 into another one of your classifications and sold to another consumer; isn't that right?

A. Which one are you referring to? Could you name the item you are talking about?

Q. Well, some of these shapes and bars. Those are used to make fabricated steel products, aren't they?

A. Yes.

Q. They may, I take it, actually be shipped in one form and to one consumer and then he will fabricate them into another form and ship them again, and you will record here, will you not, a couple of movements on the same steel?

The COURT. Mr. Wright, wouldn't that only be if it came into the eleven States and went out of the eleven States? If it went into the eleven States and went from a fabricator into the eleven States it would not appear on there at all? As I understand, this only shows the shipments into or out of the eleven States.

Mr. WRIGHT. That is right.

The COURT. But not inside the eleven States.

Mr. FINGER. Plus production.

Mr. WRIGHT. Let me clear the point up with the witness, your Honor.

By Mr. WRIGHT:

Q. As I understand it, your so-called "in" shipments here includes all shipments received in the eleven States  
224—395 regardless of where they originated; is that right?

A. That is right. That is what we said originally.

Q. So that that includes the shipments made from outside the eleven States into the eleven States and includes shipments made

from within the eleven States to another one of the eleven States or shipments made, let us say, from a point in California to a point in California; is that correct?

A. That is correct.

The Corrier. That was my error.

224—396 Q. Then it not only includes that, but if you have several shipments of the same steel as the result of successive manufacturing operations on the same product, your tabulation of the shipments may, in some instances, give you an exaggerated ultimate consumption figure; isn't that right?

A. That is only the case if you assume that the item falls into these classifications after those operations which you have described take place. But most things, once you make an operation, I think don't remain in the classifications 500, 511, 512, and 513 that we just talked about.

Q. I appreciate it is impossible to tell from what you have done here, is it not, the extent to which that would prevail or would not; is that right?

A. That is perfectly true. The other situation that you envision of continuously shipping it and terminating and originating it would inflate the terminating figures and correspondingly terminate the originated figures; and if the products stayed within the Consolidated market they would equally wash out so that it would not inflate the total net apparent consumption figure you have at the bottom.

Q. That is, it would wash out if it stayed in the same class?

A. In the same place?

Q. In the same class, if it took the same class freight rate.

224—397 I say, if the steel, in the course of fabrication or manufacture, got into another freight classification then your figures wouldn't necessarily wash out, would they?

A. I am afraid I don't visualize the situation you are describing. Could you dramatize it with a specific instance?

Q. Well, suppose somebody takes some of these products that are listed here in one classification and then they make them into a finished steel product which takes another classification and there is a reshipment within the State or a shipment, let us say, that goes outside. I can understand that if the product itself had the same class freight rate all the time. I suppose the in and out shipments would wash, but if the in and out shipments took different classes of rates, then you would not get an actual balancing effect; is that right?

A. Whether or not it would have any effect upon the total net apparent consumption, I don't know, unless you would describe a particular situation and I will try to explain it.

Q. Well, to shorten it up; the figure that you have got here really represents nothing more than what we would call an expert guess at what the consumption of these products was in the States during the years in question. Isn't that a fair statement of it, and a guess which, if it is to the extent that it is erroneous at all, it is probably erroneous on the high side?

224-398 A. No; I wouldn't admit that.

Q. You don't think that is a fair summary?

A. No, sir. I think from comparisons that I have made with other data that these computations get very accurate results and indicate to a very good extent the magnitude of the apparent consumption of these products in the Consolidated market for the seven states, or the eleven, or the four.

Q. What is the other data you are talking about? Have you got some data which you actually think gives a better picture of the consumption of this?

A. I was referring to the calculations I mentioned previously for 1937, 1938, and 1939, which were developed by a method similar to what we just talked about, and you can compare that, for instance, in 1937, with the figures derived by the National Resources Planning Board.

Q. Well, actually if you wanted to get a real accurate record of the consumption of these products in these states, I suppose your best source would be the actual shipments of the people making steel into the states in question from outside and that that, plus the local production, would, I assume, show you somewhere near what was actually consumed.

A. If you take away exports and make some other adjustments, you probably could get it, but there is no data of that nature from which you could do it.

Q. In order to do that you would have to actually subpoena or get access to the records of the steel manufacturing companies themselves?

A. I didn't quite finish. May I?

Q. Surely.

A. The explanation that I was going to give with respect to the figures of the National Resources Planning Board. You will notice from the exhibit that you showed me originally that the figure there for the seven states was 2,439,000 tons. Those figures were derived from the records of shipments of the steel companies. The figure that we developed by the method similar to what we have described was 2,508,164 tons, which to my mind shows a very good agreement between actual data derived from shipments and data by this method.

Q. That is the only year for which you have such a check?

A. The actual comparison, that is right.

There were figures—I don't know whether you are familiar with them or not—I notice in some previous discussion it was stated that there were no figures showing a break-down of products by states other than the year 1937. There was actually a War Production Board analysis published by the Bureau of Census for the third quarter of 1942. While that doesn't purport to be complete, it nevertheless gives a fairly good check with our figures for 1942.

224—400 Q. Have you got that report mentioned in your exhibit here, Exhibit 43?

A. That is this one, isn't it?

Q. Yes.

A. We didn't use it. As I said, it is only for the third quarter of 1942.

Mr. WRIGHT. I think that is all we have. I might say we don't want to seem ungrateful. We are glad to have this table in the record. I am simply trying to develop the point to which it is fallible. We think it is necessary to show just what its infirmities are. We don't object to the introduction of the exhibit.

Redirect examination by Mr. FINGER:

Q. Mr. Collins, is the method that you have described of obtaining the final figures of apparent consumption a well-recognized and accepted method among economists and statisticians?

A. Yes, sir; I believe it is.

Mr. FINGER. That is all.

Mr. WRIGHT. That is all. I think in order to have the record intelligible, we ought to have these annual sheets marked in the record there. These have the freight classifications  
224—401 which will be read in, and in order to make the tables intelligible, I think this should be marked as Defendants' Exhibit 43-A, and then we will have the whole matter in.

(Annual sheets referred to were received in evidence and marked "Defendants' Exhibit 43-A.")

R. C. STRINGFIELD, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Will you state your name, please?

A. R. C. Stringfield.

Q. Mr. Stringfield, where do you reside?

A. Pittsburgh, Pennsylvania.

Q. What is your occupation?

A. Accountant.

Q. By whom are you employed?

A. United States Steel Corporation of Delaware.

Q. Will you please state to his Honor your experience?

A. My experience has been the accounting field. I am a certified public accountant of New York State, and have been practicing there publicly or with corporation since 1917.

Q. How long have you been in the employ of U. S. Steel?

224-402 A. Since 1938.

Q. And your work has been that of an accountant and to make statistical studies?

A. Yes. I was statistical supervisor, and at the present time I am assistant to the Comptroller.

Q. Now, were the data included in Exhibits 37 to 63, so far as they relate to U. S. Steel and its subsidiaries, prepared under your supervision?

A. Yes, sir.

Q. And you vouch for them?

A. I do.

Q. Now, have you, at my request, made some computations from the data contained in Exhibits 37 to 63?

A. Yes, sir.

Q. Have you made those computations yourself?

A. I have; yes, sir.

Q. Are they accurate?

A. To the best of my knowledge and belief.

Q. Well, you know whether they are accurate or not.

A. They have been checked and rechecked.

Q. Now, I am going to ask you to state those computations one at a time, and I will ask you for each.

Have you computed the steel ingot production as shown by those tables of the industry of the country as a whole for the year 1901 of the U. S. Steel ingot production?

224-403 A. Yes.

Q. How much was it?

A. The production of United States Steel was 65.7% of the industry.

Q. How much was it in tons?

A. In tons it was 9,917,000 tons.

Q. How much was it in the year 1946?

A. In tons in 1946 it was 21,287,000.

224-404 Q. How much was it in the year 1946?

A. In tons in 1946 it was 21,287,000.

Q. How much of the industry?

A. 32% of the industry.

Q. Have you computed the production of the industry; that is, the whole industry now, the steel industry, of rolled-steel products for the five years 1937 to 1941?

A. I have totaled the industry production.

Q. That is what I mean. What is the total?

A. 201,565,681 tons.

Q. How much of that did the United States Steel produce?

A. 68,550,776 tons.

Q. How much of that did the Consolidated Company purchase; how much of the total of 201,565,681 tons? What were the total purchases of rolled-steel products for the years 1937 to 1941?

Mr. WRIGHT. Excuse me, Governor. Are these figures that are now being read any different? They are all in this material that we waived cross-examination on, aren't they?

Mr. MILLER. What?

Mr. WRIGHT. Are these any new computations? They sound to me exactly like this material we stipulated into the record.

Mr. MILLER. These totals aren't shown. These are computations that he has made from the data which you have.

224-405 Mr. WRIGHT. These are computations which don't appear, you say, on the face of these Exhibits 37 to 41?

Mr. MILLER. Certainly not in this fashion, I am sure.

Mr. WRIGHT. I understood they did.

Q. You stated that the total industry production of all rolled-steel products for the five years 1937 to 1941 was 201,565,681 tons and that U. S. Steel's production for the same period was 68,550,776 tons and that Consolidated's purchases for that period was 498,270; is that correct?

A. That is correct.

Q. Now, what percentage was Consolidated's purchases of the production of the industry as a whole, the whole industry?

A. It is less than one-quarter of one percent.

Q. What percentage was it of the production of the U. S. Steel Corporation?

A. It is less than three-quarters of one percent.

Q. Now, have you computed that same figure of production of the industry and of U. S. Steel for the year 1946?

A. Yes, sir.

Q. State it.

A. 1946, the industry production was 48,993,777 tons. U. S. Steel production was 15,181,719 tons.

224-406 Q. Now, will you state the amount of Consolidated's purchases from U. S. Steel and from others and give the percentages of each to the total?

A. Consolidated's purchases from U. S. Steel were 83,846 tons.

Q. What was that of United States Steel's total production?

A. It is less than six-tenths of one percent.

Q. And it purchased how much from others?

A. It purchased from others 94,823 tons.

Q. What percentage was that of the industry production?

A. Less than two-tenths of one percent.

Q. And its total purchases?

A. 178,669 tons.

Q. And what percentage was that of the industry production?

A. Less than four-tenths of one percent.

Q. Have you computed the five-year consumption of all rolled steel products in the eleven states that are in question here for the period from 1937 to 1941?

A. The estimated consumption is 21,900,647 tons.

Q. What was Consolidated's purchases?

A. 498,270 tons.

Q. What percentage was that of the whole?

A. Less than two and four-tenths percent.

Q. You have given the same figures for the year 1946, 224-407, the same comparison?

A. Yes, sir.

Q. State to his Honor what it was.

A. The estimated consumption in the eleven states for 1946 was 6,000,000 tons. Consolidated's purchases in 1946 were 178,669 tons.

Q. What percent was that?

A. Consolidated's purchases were less than three percent of the consumption.

Q. Now, have you taken the figure of the ten-year industry bookings in the eleven states?

A. Yes, sir.

Q. And made certain computations as to U. S. Steel?

A. Yes.

Q. The percentage of that?

A. Yes.

Q. Give the figure.

A. The ten-year industry bookings—that is, the A. I. S. C. bookings, are 14,610,121 tons. For the same ten years U. S. Steel subsidiary companies of A. I. S. C. type were 2,796,688 tons.

Q. That is not for the eleven states. That is the total for the industry?

A. That is the total nationally.

Q. Those two figures you have just given is the 224-408 national total consumption and bookings of U. S. Steel?

A. Total national bookings of U. S. Steel and the total national bookings of the industry as reported.

Q. And what percent was U. S. Steel bookings of the total?

A. 19.9%.

Q. Go on.

A. In addition to the type of product reported to the Institute U. S. Steel had additional bookings—U. S. Steel subsidiary companies had additional bookings of structural fabricated steel.

Q. How much?

A. Of 449,242 tons. This in addition to the 2,796,688 tons of A. I. S. C. type made a total of 3,245,930 tons, total fabricated structural products.

Q. All right.

A. Percentage-wise that A. I. S. C. type is 86% of the total and the non-A. I. S. C. type is 14%.

Q. In other words, the American Institute of Steel Construction only reports on certain types of products?

A. Yes, sir.

Q. Will you state to his Honor briefly what those are?

A. They are defined in the Institute publications as bridges, buildings and other permanent structures.

Q. That would include powerhouses?

A. Yes, sir.

224-409. Q. Gates for dams? Do you know whether they are included?

A. I am not sure, Governor. I don't know the complete list.

Q. But it does not include, does it, transmission towers?

A. Definitely it does not.

Q. Nor specialties?

A. It does not.

Q. And miscellaneous?

A. Named products. There is a list.

Q. Is that as nearly as you can give it?

A. That is as completely as I can give it without referring to the list.

Q. For the six years from 1937 to 1942 you have the industrial bookings as a whole?

A. On Exhibit 45 we showed the industrial bookings for ten years.

Q. Yes.

A. The total of the six years from 1937 to 1942 is 9,997,880 tons.

Q. And what was U. S. Steel's?

A. Comparing those six years with U. S. Steel's bookings in the eleven states of 283,825 tons U. S. Steel is 2.84% in the eleven states.

Q. That is 2.84%?

224-410. A. 2.84%.

Q. What was Consolidated's?

A. Consolidated's bookings in the six years for the eleven States was 84,533 tons.

Q. What percentage was that?

A. Eighty-five one-hundredths of one percent.

Q. What was the total of U. S. Steel's and Consolidated's bookings in the eleven states for the six years?

A. 368,358 tons.

Q. And what was the percentage of that combined total of the whole?

A. 3.69% of the industry bookings for those years.

Mr. WRIGHT. I have lost track of those figures. That total figure that you are referring to now is the total of all bookings of all kinds in the steel industry?

The WITNESS. No, sir.

Mr. WRIGHT. You are not talking about the structural steel total at all?

Mr. MILLER. We are talking about the total bookings in the eleven states for the six-year period of the industry.

Mr. WRIGHT. What kind of bookings?

Mr. MILLER. A. I. S. C. bookings.

Mr. WRIGHT. That is, you are referring to the totals that appear on your Exhibit 50 here?

The WITNESS. No, sir.

224-411 Mr. MILLER. Yes, sir.

The WITNESS. It is on Exhibit 45.

By Mr. MILLER:

Q. What is it on?

A. It is on Exhibit 45.

Q. Now go to your next computation.

Mr. WRIGHT. Those are for the entire United States? I thought you were making some comparison with the Western market.

Mr. MILLER. Oh, no; I am comparing the books in the eleven states with the entire bookings of the country.

Mr. WRIGHT. Yes.

By Mr. MILLER:

Q. Now state the next comparison computation that you have there. Have you there the bookings in the eleven states for the six-year period just referred to?

A. I have a total of the A. I. S. C. industry bookings for six years in the eleven states, which is 1,665,698 tons.

Q. What proportion of that was U. S. Steel?

A. U. S. Steel bookings, as I said before, in six years in the eleven states was 283,825 tons.

Q. What percentage?

A. 17%.

Q. 17% flat?

A. Yes.

224-412 Q. What was Consolidated's bookings?

A. Consolidated's bookings in the same period were 84,533 tons, or 5.1% of the industry bookings in that period.

Q. What was the combined total and the percentage of both U. S. Steel and Consolidated?

A. The total is 368,358 tons.

Q. What percentage?

A. The percentage is 22.1%.

Q. Taking the same figure of bookings of the A. I. S. C. type of bookings for the eleven states of 1,665,698 tons, have you there the amounts of bids and awards of U. S. Steel and Consolidated?

A. Yes, sir.

Q. What was U. S. Steel's bids? On how much of that 1,600,000 odd tons did U. S. Steel bid?

A. U. S. Steel bid on 632,398 tons of the types of products that are included in the industry figure of 1,665,000.

Q. That was what percentage?

A. That is 38% of the industry total.

Q. What was the amount of the awards to U. S. Steel?

A. 283,825 tons.

Q. Or what percent?

A. 17% even.

Q. What was the amount on which Consolidated bid?

A. Consolidated bid on 297,503 tons.

224-413 Q. And what were its awards?

A. And were awarded 84,533 tons.

Q. What was its percentage of bids to the whole?

A. The percentage of Consolidated's bids to the whole was 17.8%.

Q. And of its awards?

A. 5.1%.

Q. Well, you have already given that combined figure.

Now, have you made also a computation of the number of jobs and the tons out of the total on which U. S. Steel bid?

A. Yes. The total number of jobs—

Q. For the ten-year period now in the eleven states. How many jobs did it bid on and how many tons?

A. The ten-year period in these eleven states, all types of products, U. S. Steel bid on 2,409 jobs and a total of 1,273,152 tons.

Q. How many jobs and how much tonnage and what percentage was awarded to it?

A. Awarded to U. S. Steel were 839 jobs, 499,605-tons, or 39.2% of the total tonnage on which they bid.

Q. What was Consolidated's?

A. Consolidated was awarded 24,162 tons or 1.9% of the total tonnage on which U. S. Steel bid.

Q. And what was awarded to others?

A. The total of 749,385 tons, or 58.9% of the total tonnage on which U. S. Steel bid.

224-414 Q. Then it would appear that of the tonnage on which U. S. Steel bid at all, Consolidated received awards of 24,162 tons, or 1.9%, and that all others aside from U. S. Steel received awards of 749,385 tons, or 58.9%; that is correct, isn't it?

A. That is right.

Q. Now, have you made a computation of the jobs on which Consolidated bid?

A. I have. I have totalled the jobs, all these jobs that U. S. Steel bid on.

Q. As shown by this data, you have a computation there of the total jobs of the amount on which U. S. Steel bid and on which Consolidated also bid?

A. That is right, sir.

Q. What was that tonnage?

A. There was 166 jobs, or 122,353 tons.

Q. So that of all the jobs on which U. S. Steel bid, Consolidated bid on only 166 jobs with a total of 122,353 tons during the ten years we are talking about in the eleven states; is that correct?

A. That is what the figures show.

Q. And what was the percentage that Consolidated bid of jobs and what percentage of tonnage?

A. The percentage of jobs bid by Consolidated was 6.9% and the tonnage was 9.6%.

224-415 Q. Now, of those 122,353 tons comprising all on which both Consolidated and U. S. bid, the amount awarded to Consolidated was how much?

A. 24,162 tons.

Q. The amount awarded to U. S. Steel was how much?

A. 38,929 tons.

Q. And the amount awarded to all others was how much?

A. 59,271 tons.

Q. That comprises the total of 122,353 tons on which both U. S. Steel and Consolidated bid in the 11 states for the 10 years?

A. That is right.

Q. Now, the statistics show, do they not, that Consolidated bid on a considerable tonnage on which U. S. Steel didn't bid?

A. They do.

Q. And have you computed the total of all awards made to Consolidated for the 10-year period?

A. I have compared the total structural awards of Consolidated for the 10 years, which is 159,997 tons.

Q. And deducting the 24,162 tons out of the amount on which both U. S. Steel and Consolidated bid, leaves what figure?

A. Well, this—

Q. What is the difference?

A. Of Consolidated total awards of 159,997 tons, 224-416 24,000 was the result of jobs that were bid on by both companies.

Q. What was the balance?

A. The balance of 135,735 tons was awards to Consolidated on which U. S. Steel subsidiaries didn't bid.

Q. Didn't bid, exactly. And what percentage of Consolidated's total awards wasn't bid on by U. S. Steel subsidiaries?

A. 84.8%.

Q. And what percent of it was actually bid competitively?

A. 15.2%.

Mr. MILLER. That is all.

The COURT. We will take a five-minute recess.

(At this point a brief recess was taken.)

(R. C. STRINGFIELD (resumed).)

Cross-examination by Mr. WRIGHT:

Q. All of these bidding figures you have been summarizing, just to be sure the record is clear here, relate only to the activities of the Virginia Bridge Company and the American Bridge Company; isn't that correct?

A. Any figures that are called Steel Corporation or 224—417 U. S. Steel and its subsidiaries.

Q. When you have been referring to U. S. Steel and its subsidiaries in your testimony, you were referring actually only to the Bridge Companies when you were talking about competitive bids?

A. That is right.

Q. Because if you wanted to show a complete competitive bidding picture for the period that you were talking about as between Consolidated and U. S. Steel's subsidiaries, I suppose there are some ship bids you would have to put in there between the Federal Shipbuilding and Drydock and maybe Western Pipe & Steel?

Mr. MILLER. He wouldn't know about that, but I can tell you.

Q. That you don't know?

A. I don't know anything about that. This is the structural part.

Q. That is all you are familiar with, those structural bids that Virginia and American Bridge Companies were involved in?

A. All these figures are taken from the exhibits or totals of figures on the exhibits.

Mr. WRIGHT. That is all.

Mr. MILLER. That is all. I will call Mr. McConnor. I am calling this witness, your Honor, not to refute anything 224—418 that we think the Government has proven, because we don't think the Government has proven anything on the subject that requires refutation, but because I promised Mr. Wright that we would call a man who could tell him all about the pipe business.

WILLIAM F. McCONNOR, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name?

A. William F. McConnor.

The Court. I assume that even if it doesn't answer anything that the Government has proven, it is material in the case?

Mr. MILLER. It would be if we wanted to put in defense in reference to it. Under the pleadings it is, but we don't think it is under the proof up to date. We don't think there is any competition between the Tube Company or the Consolidated and the others.

Q. Mr. McConnor, where do you reside?

A. Pittsburgh, Pennsylvania.

Q. What is your position?

A. Vice President in charge of Sales, National Tube Company.

Q. Will you just state to his Honor the experience you have had in that business?

A. I have been with National Tube Company since 1917, about 30 years. The first 14 years in the Engineering and Operating Department and mills, and the last 16 years in the Sales Department.

Q. You are an engineer?

A. Yes, sir; graduate mechanical engineer.

224-420 Q. What generally are your duties in your present position?

A. I have responsibility of the sale of all tubular goods produced by National Tube Company.

Q. Is it your business to study and to know the market conditions and the consumption of the country of such goods?

A. Yes, sir; it is.

Q. Do you claim to know about it?

A. To a reasonable extent; yes, sir.

Q. Now, does the National Tube Company supply products to the Oil Wells Supply Company?

A. They do. They supply all the tubular products that the Oil Well Supply Company sells.

Q. Are you also familiar with the business of the Oil Well Supply Company?

A. To a general extent; yes, sir.

Q. You know what their sales consist of or products they manufacture?

A. Yes, sir.

Q. And with whom they compete?

A. Yes, sir.

Q. Now, I ask you whether any of the products now made or sold either by National Tube or Oil Well Supply are competitive with any product made or sold by the Consolidated Steel Company

224—421 now or whether the products made and sold during the period we have been talking about here, beginning with 1937 down to date, are or have been competitive products? I am not asking you, now, for the competition between the two; I am trying to shorten this to ask you if the products made and sold by either during that period of time down to date are products competitive with the products made and sold by the Consolidated Steel Company.

Mr. WRIGHT. We object, your Honor, very strenuously to that form of shortening. He certainly can say what these products are and show whatever basis there is on which your Honor might form a judgment to the effect that they were or were not competitive; but I submit that the conclusion as to whether or not any of these products are in fact competitive or not is one for your Honor to draw from facts in evidence rather than have this witness to state with no foundation whatsoever.

Mr. MILLER. I think a man in this business is able to say whether one product is competitive with another. Of course, I shall go on and have him state just what the products are.

Maybe I should reverse the process, your Honor.

The COURT. I think a reversal of the process will meet Mr. Wright's objection.

Mr. WRIGHT. Yes.

By Mr. MILLER:

224—422 Q. All right, state the products of the National Tube which it manufactures and sells.

A. The products of National Tube Company are wrought steel pipe and tubing. They are produced in four general classifications: First, what is known as oil country goods, which is drill pipe casing and tubing used in the drilling of oil wells.

Secondly—

By Mr. WRIGHT:

Q. Drill pipe casing, you said?

A. Drill pipe casing and oil well tubing; commonly known in the trade as oil country goods.

By Mr. MILLER:

Q. Is that the class of goods that the Oil Well Supply Company sells primarily, sir?

A. That is the bulk of their business.

Q. You supply those products to Oil Well Supply and it sells it to the market?

A. That is correct, sir.

The next classification is known as standard pipe. That is pipe

sold throughout the country for construction purposes, house piping, many sundry uses of the like, known as ordinary merchant pipe or standard pipe.

Q. For plumbing?

A. For plumbing, heating, refrigeration.

The third classification is known as line pipe. That 224—423 line pipe is divided into two general classifications.

One is known as trunkline pipe, which are the long and large pipe lines. The other classification is known as miscellaneous line pipe which are smaller sundry miscellaneous uses.

The fourth and last classification is what we term tubing specialties such as boiler tubes, steam tubes, refinery pipe, mechanical tubing, automotive tubing, airplane tubing and the like. Those are the four classifications making up the main part of National Tube Company's business.

Q. The line pipe which you spoke of, what dimensions is it?

A. The line pipe, speaking of the trunkline pipe, runs from about four inches inside, which is four and a half inch outside diameter, to twenty-six inches in diameter. The miscellaneous line pipe runs from one-eighth of an inch up to larger sizes.

Q. Is that seamless pipe?

A. National Tube Company makes two kinds of pipe only butt-weld pipe in sizes up to three-inch, the small pipe up to three-inch, and seamless from, let us say, two-inch on up to 26-inch; and in answer to your question the trunkline tonnage is all seamless pipe. The miscellaneous line pipe tonnage is a small amount of butt-welded pipe and the balance seamless pipe.

Q. Those the the products of the National Tube?

A. Yes, sir.

224—424 Q. And you said the principal products that Oil Well Supply sells are oil country goods? I don't know whether his Honor knows what oil country goods are. Suppose you explain a little more in detail.

A. The principal products of the Oil Well Supply which it sells to suppliers of equipment and machinery needed in the drilling of oil wells by the various oil companies includes casing tubing, drill pipe which we manufacture, certain items that they manufacture such as pumps, rotary rigs, Christmas trees, and the like, and other items for which they act as selling agents. In other words, they endeavor to sell large and small oil companies everything that they need in the production of oil and drilling in the bringing of oil to the surface of the ground.

Q. Are you familiar with the products sold by Consolidated Steel Company?

A. I am in a general way, sir.

Q. We have covered now the structural field, and putting that

to one side I am referring particularly to plate fabrication. You are familiar with that?

A. I am familiar with the plate fabrication insofar as it relates to pipe. Any plate fabrication of other types such as structures, bins, and that sort of thing I have no knowledge of that.

Q. But you are familiar with it so far as it relates to 224—425 pipe?

A. Tubular goods and pipe; yes, sir.

Q. The fact is that Consolidated does make pipe and you make pipe?

A. That is correct.

Q. I now ask you whether you make the types of pipe that are competitive?

Mr. WRIGHT. Let us find out if he knows what kinds of pipe Consolidated makes.

Mr. MILLER. All right.

By Mr. MILLER:

Q. Tell him.

Mr. WRIGHT. Then I think the other question would be proper.

A. The type of pipe made by Consolidated is electric weld pipe known as fusion weld or arc weld pipe in sizes from 4-inch up to say 30-inch. We don't make any electric weld pipe. The pipe that Consolidated make other than the pipe larger than 26-inch is made primarily for and sold to the water works industry, and our pipe is sold primarily to the oil and gas industry. We don't make the same type of pipe, and the sizes which we manufacture and the gages and the lengths are in general quite different from those made by Consolidated Steel. They only overlap at a very small part of the field insofar as the physical dimensions of the pipe are concerned.

224—426 Q. You have spoken of pipe made by Consolidated for water conveyance. Are those what have been referred to as penstocks?

A. No, sir. Well, yes, to a certain extent penstocks, and many other types of low-pressure water pipe. It is true that penstocks are included in that as far as Consolidated is concerned. National Tube Company do not make any penstock pipe. They have not made any for ten years.

Q. And none of what you term light-pressure pipe?

A. We don't compete with that. We make high-pressure pipe only.

224—427 Q. And no such pipe as required in the field to which you have just referred that Consolidated engages in?

A. That is correct, sir.

Q. Is there any other class of pipe?

A. Consolidated makes some pipe for transmission or trunk lines in sizes larger than 26-inch, which is used similarly to some of our pipe, but we stop manufacture at 26-inch, therefore, don't compete with this larger pipe as made by Consolidated at Los Angeles.

Q. Is there any other respect in which the two kinds aren't competitive?

A. Well, they differ as to physical characteristics; they differ as to price, and they differ as to wall and wall thickness and lengths. There is considerable difference.

Q. Do they differ as to cost?

A. We assume so, from the prices at which they are sold. We assume that they differ as to cost. My knowledge of the processes would lead me to make the statement, I think, that they do differ as to cost because we have made pipe similar.

Q. In the past?

A. In the past.

Q. But you don't do it now?

A. No, sir.

Q. And haven't for 10 years?

A. That is correct.

224—428 Q. Well, now, I ask you the general question, have you ever or to your knowledge has Oil Well Supply Company sold any of the products which you have now described in competition with Consolidated? Have you ever met Consolidated competitively during this period that we are talking about, either Consolidated or any of its subsidiaries in the sale of the products which you have described?

A. That is, Oil Well Supply first, you mean?

Q. Take them both.

A. I know of no products that are made by Oil Well Supply or sold by Oil Well Supply that compete with products made or sold by Consolidated.

Q. Does Consolidated make similar products?

A. Not that I know of.

Q. What about the National Tube?

A. In the case of the National Tube, we don't regard Consolidated as a competitor in the type of pipe in the markets that we sell.

Q. Why not?

A. Because it is a different type of pipe and a smaller size. It is a light wall pipe made for irrigation and water transmission purpose at low pressures.

Q. You don't make that kind of pipe?

A. We don't make that kind of pipe.

Q. Take the other class.

224—429 A. The other class in the large sizes, the pipe that they make is larger than our pipe, as I explained before, in the high pressure pipe, and in the sizes in between, which you may say overlap from the physical dimensions, such pipe comes within the range of 22- to 26-inch pipe, in dimensions from  $\frac{9}{32}$  to  $\frac{3}{8}$  wall, and our experiences have been that our prices anywhere in the United States are lower than Consolidated's delivered prices and we don't encounter competition, losing business that we desire to take to the Consolidated Steel.

Q. In other words, the Consolidated product cannot compete with your product up to the maximum that you make, 26 inches?

A. That has been our experience.

Q. And have you ever sold, to your knowledge, pipe to anyone in competition with Consolidated?

A. Well, we have.

Q. During this period we are talking about?

A. There have been two or three sales. You are going up to the period of 1946. 1937 to 1946?

Q. We are talking about a period from 1937 to 1946.

A. I can think of one sale made in 1946 where we sold the same customer pipe on the same pipe line at the same time.

Q. That would look, on the face of it, as if it might be competition. You are making one end of a pipe line and Consolidated is at another?

224—430 A. That is correct.

Q. Why can't they compete then?

A. This situation is a matter of availability. The customer cannot buy from the sources that he usually buys sufficient pipe to lay this line quickly. He is, therefore, buying a portion of this pipe from Consolidated Steel. The job in question is the El Paso Natural Gas Company, a trunk line of 730 miles of 26-inch pipe. We are furnishing approximately 230 miles, another competitor is furnishing 400 miles, and Consolidated 100 miles. There is a difference of some \$31 a ton in the delivered price of our pipe and that furnished by Consolidated Steel.

Q. Which is the lower?

A. The National Tube Pipe is \$31 a ton lower delivered on the pipe line than the Consolidated.

Q. This is going on right now?

A. At the present moment. The sale was made in 1946. The pipe is being delivered now.

Q. What was there about the time element? Is the customer under penalty?

A. The customer is under penalty to get the line laid. He wants to get it laid to make use of it, transmit gas, and he is going to any means that he can in order to get that line laid quickly.

Q. What are the general conditions which have a limiting factor on the ability to lay such a pipe line at this time?

A. The availability is bad at this time.

Q. Why?

A. The demand is far in excess of the supply due to probable interruptions of the war. When various lines could not be laid, and the demand is far more than we or the industry can furnish.

Q. And, as a matter of fact, this particular concern is getting pipe from three sources, isn't it?

A. That is correct.

Q. The ones that were available regardless of price?

A. That is correct.

Q. Well, do you know of any other sale of pipe during the period we are talking about, except this one, in which there was anything that on its face could superficially look like competition?

A. I know of only one other case where we made a sale in 1946. The pipe is being delivered in 1947. I understand that the same customer bought some pipe from Consolidated, but I believe they bought the pipe from Consolidated in 1947, which would be outside of the period. In other words, our pipe would be in the period.

Q. Bring it down to 1947 because we are living in 1947. If there is competition now, we want to know it.

A. We sold a relatively small amount of tonnage, two or three thousand tons, 24-inch OD by  $\frac{3}{8}$  walls, to the Pacific Gas & Electric Company for delivery to Santa Clara, California. Our pipe was delivered there. They didn't have enough pipe to do the job. They wanted and they bought some pipe from Consolidated Steel, so I am informed, to fill out what they needed without being delayed by waiting until next year to get some more pipe from us, and our pipe sets, down at Santa Clara, California, is delivered at a lower price than the pipe coming out of the mill of Consolidated of the same dimensions.

Q. Although their mill is very close?

A. Yes, sir. I am talking about their f. o. b. mill price. I am not talking about the freight to Santa Clara. I am talking about the price of the pipe at San Francisco.

Mr. MILLER. You may cross-examine.

Cross-examination by Mr. WRIGHT:

Q. You know, Mr. McConnor, do you, the full list of the items that the Oil Well Supply Company handles?

A. I wouldn't say that I know the full list. I know in general the important items they handle. I know all about our product that they handle.

Q. Well, they and Consolidated both sell what are known as oil country goods, do they not?

224-433 A. The Oil Well Supply Company sells oil country goods, but, to my knowledge, Consolidated doesn't sell oil country goods. With the only qualification I can make, at one time, they said they bought surface casing and set it in the hole in the nature of an irrigation job. They bought that from us and had a contract with us, and we have furnished none of that for five years and contemplate furnishing nothing further. That, to us, doesn't indicate we are in the business of competing with oil country goods. They produce none themselves. They produce water well pipe, but we don't make that.

Q. They do sell to oil well operators certain pipe or casing, do they not?

A. Yes, in the local situations there. As I mentioned, they sold possibly 90% to water works people. The other 10% would be miscellaneous sales to oil companies and gas companies, of pipe, but it is not oil country goods within the meaning of the term as we describe it.

Q. Whether you call it oil country goods or whether you call it something else, the Oil Well Supply Company does today, does it not, sell products to oil well operators that are similar to and suitable for the same purposes as products that Consolidated and its subsidiaries sell; is that right?

A. I am not familiar with those, if that is true, sir.

Q. You don't know whether that is true or not?

A. I know something about the general business of  
224-434 both of them, and I know of no such cases as you described.

Q. You mean you know of no product that Oil Well Supply Company sells to oil well operators or oil companies which is suitable for the same purpose as a product that is sold by Consolidated?

A. No, sir; I don't know of any. If there are, it would be, in my opinion, that they would be inconsequential.

Q. You don't have any knowledge on that subject; is that right?

A. No, sir.

Q. Now, you, the Oil Well Supply Company, sell cracking stills?

A. Cracking stills?

Q. Yes.

A. No, sir. They sell still tubes.

Q. They sell material for use in making stills?

A. They sell some still tubes.

Q. How about culvert pipe?

A. We make no culvert pipe. Oil Well Supply Company makes no culvert pipe or sells any culvert pipe.

Q. Do they sell it?

A. Not that I know of. I never heard of their selling any.

Q. Any standpipes?

A. We make no standpipes or sell any article as  
224-435 standpipe.

Q. The Oil Well Supply Company?

A. Not that I know of.

Q. Well casing?

A. Pardon?

Q. How about well casing?

A. The Oil Well Supply Company sells considerable well casings for oil wells. Consolidated sells some water casing that I have noticed and know of, for water well, but they don't sell well casings for oil wells that I have ever encountered.

224-436 Q. You don't know whether they do actually sell well casing for oil wells or not; is that right?

A. I only know that I have never encountered it. I have explained to you that they did one time run our casing in the hole, which is more or less of an erection job. They did that. We furnished the material for that through Oil Well to them. That has not taken place in the last five years.

Q. Oil Well Supply Company does sell oil refinery equipment; is that right?

A. Some, yes, sir; such as valves, fittings, tubes and pipe.

Q. Consolidated also sells oil refinery equipment, does it not?

A. It is not my understanding that that is, you might say, any predominant part of their sales. As I mentioned, ten or fifteen percent probably of their plain end material, tubular material, is sold to many industries.

Q. I am not talking about the percentage of it. I see it is a fact, is it not, that Consolidated sells all refinery equipment of the same general class as that sold by Oil Well Supply Company?

A. No, sir. I would not say that at all. They may sell something to the refineries but they do not sell to the same class as sold by Oil Well Supply Company.

Q. What is the refinery equipment that you think  
224-437 they sell that you believe Oil Well Supply Company does not sell?

A. I am saying that they sell odd lots of pipe here and there, just plain pipe for some specific purpose. I am saying that Oil Well Supply Company sells valves, they sell steel tubes, pumps, and so forth. So far as I know Consolidated do not sell steel tubes, they do not sell valves and fittings to the oil refiners.

Q. How about machinery?

A. Oil Well Supply Company sells pumps to the refiners, so

far as I know. Consolidated I have never encountered any sales of Consolidated of pumps to the oil refiners.

Q. You say these pipes that you and Consolidated make are different because you make what you call a seamless pipe 2 inches to 26 inches?

A. That is correct, sir.

Q. And they make the same size pipe, but theirs you describe as an electric or arc-weld pipe?

A. That is correct.

Q. Will you tell us just what the difference is and those end products?

A. The difference in the products—seamless pipe is made from a solid round forged and rolled without any seam of any type in it. A welded pipe, which Consolidated makes, is made from flat rolled plate, skelp, strip or whatever you want to call it. 224—438 rolled up into a cylindrical form and welded. That is the difference between a seamless and welded pipe.

Q. The difference you have described is one of manufacture. Can you tell us what the difference is, if any, in the characteristics of the end products?

A. The differences are primarily in the dimensions of the pipe that they make as contrasted with the dimensions of the pipe that we make.

Q. I understood you to say that you made the seamless pipe in dimensions from 2 inches to 26 inches, and I understood you to say that they made welded pipe in dimensions from 4 inches to 30 inches.

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. Well, for the most part, then, the dimensions are practically the same?

A. You have only mentioned one of the dimensions. There are two other dimensions besides the diameter. They are thickness and length. Some of the pipe that they make is in 8- and 12-foot lengths, whereas our pipe is in 40-foot lengths. A lot of the pipe they make is very light-walled, quarter inch, where ours are heavier than that. They are used for different services, different in use, different commodities, different classes and grades of goods.

Q. Let us have the differences on the thickness, then. 224—439 What are the variations in the thickness on the pipe that you make?

A. Well, primarily—let us take some size, for example.

Q. Well, the whole range of those 2-inch and 26-inch sizes—that is, your diameter range, what is that thickness range?

A. Their diameter range in 4-inch to 20-inch is some very light gauges such as 12 gauge up to quarter inch in the larger sizes, and our thicknesses in the larger sizes start at  $\frac{3}{32}$ nds of an inch and go up to half inch for the majority of pipe, and in many cases up to one inch and inch and a quarter thick on special pipe; but predominantly their pipe is lighter weight for lower pressure than the pipe which we make.

Q. Your pipe in general is what you call heavier and stronger—

A. That is correct, for higher pressures.

Q. A product used for higher-pressure purposes?

A. Yes, sir.

By the COURT:

Q. That is, the solid pipe would be more available for high pressure uses than a welded pipe?

A. That plus the dimensions of the pipe, the fact that the wall thicknesses are heavier.

By Mr. WRIGHT:

Q. I suppose all these dimensions of what type characteristics you want depends on the specifications of the particular line job that is involved?

A. That is true; yes, sir.

Q. I take it from what you said that the pipe that they make is capable at least in this gas line field of doing or performing the same sort of service as your pipe?

A. Yes, I think that is correct.

Q. And the reason that you say this pipe which is similar or suitable for the same purpose is not competitive is you have, you feel, a manufacturing cost advantage which enables you to set your pipe down anywhere for less than they can make it?

A. That has been the experience in competitive jobs, sir.

Q. That has been true in the past. I suppose you don't have any assurance, however, do you, that you would be able to preserve indefinitely this cost advantage that you now have?

A. Well, from my knowledge of the product, their method of manufacturing and our method of manufacturing, we don't see how they can reduce the cost by that process to equal or meet or approach the cost by the method that we produce.

Q. Your processes are patented, are they? Is there any special—

A. Our seamless processes have no patents that amount to anything that would prevent them from making them. We, however, hold a patent on the welded process under which Consolidated operates through another source. In other

224—441 words, we control the patents for arc welding under a blanket of flux which is licensed to the Lindee Weld outfit which in turn licenses Consolidated.

Q. In other words, you feel you are in a position to control the competition of all the welded pipe competitors by the royalties that you are able to exact for the use of the welding process?

A. Not at all, sir. There are three other types of electric-welded pipe which we regard as very stiff competition and made by A. O. Smith and by Republic Steel Company and by Youngstown Sheet & Tube Company, of which we have no connection with any patents or any other factors that enter into that production; and the patent I referred to expires in November of this year, so we haven't got very much longer for that to go.

Q. Insofar as you have any protection based on the patent that it out the window for the future, anyway?

A. That is right.

Q. Why is it that you don't choose to exploit the welding patent yourself and make the welded pipe?

A. We had a plant to do just that, make exactly that kind of pipe. As a matter of fact, we sold part of the equipment to Consolidated when we scrapped that plant, which was some years ago.

Q. What plant was that?

A. That was at our plant at Christy Park Works  
224—442 where we were able to make electric-weld pipe from 14-inch to 30 inches in diameter.

Q. Christy Park, can you tell us where that is?

A. It is in the Pittsburgh district. It is a suburb of McKeesport, some 14 miles from Pittsburgh.

Q. You were at that time making extensive quantities of this welded pipe that Consolidated makes?

A. That is of a similar type, very similar. We made over a thousand miles, if you call that extensive quantities.

Q. Then you say you abandoned that type of production when?

A. We abandoned the actual production back, I would say, in 1932 or 1933. We scrapped the plant in 1940, and in between 1932 and 1940 we sold some of the equipment to the Consolidated Steel or rather to Western Steel at that time, Western Pipe & Steel. I think they still have the equipment operating out there.

Q. You are in a position, of course, to produce, are you, welded pipe at any time when you should feel that it would be more profitable to produce and sell welded pipe than seamless pipe in the sizes in question?

A. We are not in that position as far as any equipment is concerned. I explained to you that we scrapped all of that equipment. We had two electric weld plants and both of them were scrapped in 1940, and when I say "scrapped" I mean

224-443 completely scrapped. There isn't any of the equipment or machinery left. The other equipment is in the buildings where this material was installed.

Q. If I understood it, the equipment for that purpose is now or shortly will be available to anybody who wants to make welded pipe?

A. That is merely a process patent that you are talking about, simply welding under a blanket of flux. It has nothing to do with the equipment or machinery. It is a process patent.

224-444 Q. How about the seamless pipe equipment? Is that equally available?

A. That is equally available for any one who wants to build it or buy it. There are no basic patents that would prevent anyone from doing it. As a matter of fact, we have five or six large competitors that make seamless pipe.

Q. And as far as you know, there is nothing to prevent Consolidated from using the seamless process if they should find that is more profitable than the welded process; is that right?

A. Not at all, absolutely.

Q. Now, these jobs you referred to, these specific 1946 and 1947 jobs, those were pipe lines for carrying natural gas?

A. Correct.

Q. How about oil pipe lines? Do you use the same kind of pipe on those or is that different?

A. That is right. As a matter of fact, 60% or two-thirds of our trunk line business is for the purpose of carrying oil as compared to 30% to one-third for carrying gas.

Q. Is there any difference in the characteristics of the pipe that you have to have for oil pipe lines and gas pipe lines?

A. No difference, so long as the pressures are comparable, the working pressures; in other words, two lines operate at 224-445 1,000 tons pressure gradient, either gas or oil. There would be practically no difference. There is a difference in surge action. There is a little greater factor of safety used on oil lines, but they are very, very similar.

Q. Are you familiar with this contract that was recently let for the construction of a rather large pipe line in Arabia?

A. Yes, sir.

Q. That was let to Consolidated, was it not?

A. That is my understanding; yes, sir.

Q. That is a job requiring about a million tons of steel. Do you know the general specifications?

A. When you say 1,000,000 tons of steel, I would say no. I am referring to the pipe only, if that is what you are referring to!

Q. Yes.

A. The pipe is about 275,000 tons of pipe that Consolidated has for the line, which is 1,100 miles long, or thereabouts. We have a portion of that line. The pressure on that line is some 23,000 tons, so the total will be approximately 300,000 tons.

Q. You and Consolidated bid that job jointly, did you, or what was the arrangement?

A. Not at all. We sold or negotiated the sale of the pressure gradient pipe, which is entirely separate from the 224—446 other part of the line that Consolidated sold.

The customer gave us an inquiry and discussed with us the making of the pipe that Consolidated got. We were not able to make the size of pipe that the customer wanted.

Mr. MILLER. Give the size.

The WITNESS. The size is 30- and 31-inch in diameter for Consolidated, and in our case the pressure gradient will be 24- and 26-inch. The pressure gradient is only about 7% of the total job.

Q. Who is the customer there?

A. The customer is Trans-Arabian Pipe Line. It was owned originally when the order was placed—

Mr. MILLER. I don't think counsel is curious to go into that, are you?

Mr. WRIGHT. Yes; I am curious.

The COURT. Has it anything to do with this case?

Mr. WRIGHT. I beg your pardon?

The COURT. Has it anything to do with this case?

Mr. MILLER. Not a thing.

Mr. WRIGHT. I think it has a great deal to do with this case. It represents a job which in size and dollar volume would probably be more than all this structural business put together that has been talked about here.

The COURT. I accept your assurance that it is material, in your opinion.

224—447 Mr. MILLER. Is it material with whom the arrangements were made? I don't care anything about it. It is just a matter of his curiosity. That hasn't any relevancy.

By Mr. WRIGHT:

Q. Let me say this: there is nothing confidential, is there, about the information of the customer who was building the pipe line? I take it that I am not asking you to reveal any business secrets.

A. No, no.

Q. That is the Trans-Arabian Pipe Line Company?

A. Yes, sir.

Q. That pipe, the main part of the pipe in the line, what would you say it is, 70% or so?

A. Better than 90%.

Q. 90% is to be welded by Consolidated at its plant; is that right?

A. That is right, at one of its plants.

Q. And then the Steel Corporation made an arrangement to furnish the plates for the welding?

A. Well, I believe that Consolidated is buying the plates from the Steel Corporation. As far as I know, that was their closest source of supply, and it is my understanding, and I have heard and read, that they have the business at the Geneva plant. I have no knowledge of the order personally. It is my understanding that is where the order is placed for the plate.

Q. And then the Steel Corporation also has the contract to transport and deliver the pipe in their ships; is that right?

A. That is what the paper says. I presume that is correct.

Mr. MILLER. Do you think that is relevant?

Mr. WRIGHT. Yes, I do.

Mr. MILLER. He means the Steel Corporation. What company do you mean?

The WITNESS. I presume he is referring to the Isthmus Steamship Company.

Mr. WRIGHT. I think that is on the list of subsidiaries we put in evidence.

Q. This 30- and 31-inch pipe that Consolidated is making for that job is a size that you can make if you wanted to make, isn't it?

A. No, sir.

Q. You say you couldn't manufacture that pipe of that size?

A. That is correct, we couldn't with the present equipment that we have.

Q. But if you wanted to install heavy equipment you certainly could fabricate your plates and pipe of that size couldn't you?

224-449 A. The National Tube Company is a integrated producer of pipe. We produce our pipe from certain steel in the form of which we have it; namely, rounds and small plates. We don't manufacture plates ourselves. We have no equipment to make the plates from which to make this pipe. If we went outside and bought the plates from the corporation company or some other company and went outside and bought the equipment and installed that and bought the plates and brought them to the equipment, then we can make the pipe, but we don't have the plates and we don't have the equipment. We aren't interested in making pipes on anything other than our own production of steel. That is our business as an integrated steel company.

Q. What is the dollar volume total on that Trans-Arabian job?

A. I could estimate that. I don't know exactly, but the pipe, roughly, is 300,000 tons and it will probably be sold in this country

for around \$125 a ton in round figures, if that give you some idea of the dollar volume.

Q. That would be around \$375,000,000?

A. That is approximately correct; yes, sir. The job, as spoken of or referred to, is a \$500,000,000 job and other things that go along with it.

Q. Is that just newspaper exaggeration, or is that about right for the total job?

224-450 A. No. I will say from the price of pipe as we see, I mean; from other sales that have been made, that would not be a very ridiculous figure.

The COURT. Did you say \$365,000,000?

Mr. WRIGHT. I figured \$375,000,000 by multiplying 300,000 tons times \$125. I don't know whether my arithmetic is correct or not.

Mr. MILLER. Is \$300,000,000 too high?

The COURT. I thought it was too high. It only made \$36,000,000.

I knew my figures weren't very accurate.

224-451 Q. Well, let us see what the witness said.

A. I gave you a price per ton and the tons and that is all I did.

Q. I understood you to say just now the whole job would run about a half billion dollars. How much of that would be pipe?

A. The figure there, the multiplication, as I see it, would be around, as his Honor says, around \$36,000,000 or \$37,000,000, but that is just the pipe that we are talking about in this country. That is not transporting it, laying it, or doing anything else with it.

Q. The thing that makes up the rest of the half billion then, is transportation, erection, and the other—

A. Pumps, maybe refineries that they are going to build over there, ships, and all that sort of thing.

Q. That goes with the line?

A. Yes. We think only in terms of the tonnage involved. We do not stop to think of the money involved. We think in tons of the tons of pipe and the relative value of pipe at the mill.

Q. Do you know whether there were any other bidders on that job?

A. I know several people were asked to submit a proposition on the job, including ourselves, but I don't know of anyone  
224-452 that submitted a firm proposition. So far as I know, I don't have knowledge of any other complete proposition submitted.

Q. Do you know of any other companies other than Consolidated offhand that were equipped to handle that kind of job?

A. Well, it depends on when you say "equipped" in what way you mean. Had a shop and all the equipment waiting to do the job?

Q. A capacity and the organization necessary to handle it.

A. Well, other companies that probably had the organization could go into the thing, but they would not have the capacity under these conditions probably and they may not have everything else that goes along with it. Consolidated, I don't believe they had it until they added to their equipment, and so forth.

Q. Until they added when? What addition are you referring to? You mean an addition made specially for the job?

A. That is my understanding; yes, sir.

Q. Did your company bid on the so-called Big Inch pipe line?

A. We bid on it and furnished over 90% of it.

Q. That was also an oil line similar to this Trans-Arabian job?

A. That is correct. When you say it is similar, yes, sir; it is 24-inch by  $\frac{3}{8}$  wall.

Q. The difference in the two lines is only one of 24—453 diameter of pipe; is that right?

A. That is right, diameter of pipe and some minor differences in specification.

Q. Do you know who else bid on that job?

A. Sir?

Q. Do you know who else bid on that job?

A. On the Big Inch job?

Q. Yes.

A. A. O. Smith of Milwaukee and National Tube were the only two companies at that time that could make that size pipe. Smith furnished about 10%; National Tube furnished 90%, in round figures.

Q. That was laid down in the East, was it not?

A. That was laid from the oil fields of Texas to a point close to Philadelphia and New York. Phoenixville, I believe, is the name of the junction point, and two forks go from that point to Philadelphia and New York.

Q. How long was that one?

A. That line was about some 1,250 miles long, about 340,000 tons of pipe.

Q. In general size it was about the same as this Trans-Arabian job?

A. General size? I have given you the exact dimensions of it. One is 24 by  $\frac{3}{8}$  and the other one is 30 and 31 inches. That is a little different.

224—454 Q. I am talking about the total tonnage.

A. The total tonnage is fairly similar, but in size there is quite a difference between 24 and 30 and 31 inches.

Q. To be precise, 5 inches?

A. That is 6 and 7 inches, to be precise.

Mr. WRIGHT: That is all.

Mr. MILLER. I have some exhibits that I wanted to put in evidence if I could do it now before adjournment, your Honor.

The COURT. Yes.

Mr. MILLER. I want to offer in evidence the official report or part of the official report, as printed by the United States Government Printing Office of Mr. Symington to the Congress on the disposal of Government iron and steel plants and facilities under date of October 8, 1945, and I merely offer the letter of transmittal in preface and pages 20 to 24, inclusive, which relate to the Geneva Steel Plant. I would suggest in view of the arrangement we made with counsel that to save time and not have the record encumbered that the reporter copy into the record Mr. Symington's letter of transmittal in the preface and the pages of the report to which I have referred.

I would just like to refer—

Mr. WRIGHT. I would like to see it.

221—455 Mr. MILLER. While counsel is reading it I may read to your Honor certain excerpts from it to save time.

This report deals with the whole subject of the disposal of steel plants that have been made surplus.

Mr. WRIGHT. I am still looking for Mr. Symington's letter. You said that was at page 21?

Mr. MILLER. No, that is on the very first page.

Mr. WRIGHT. That is what you are offering and then what?

Mr. MILLER. That and pages 20 to 24, all relating to Geneva. The rest of it relates to other plants that haven't any relevancy here.

While counsel is reading shall I to save time read these excerpts? (Mr. Miller read the excerpts referred to off the record.)

224—456 Mr. WRIGHT. May I inquire what the purpose of this reading is here, what issue it is relevant to that you are now proving?

Mr. MILLER. I am now proving the purpose for which the Geneva Steel plant was sold to the United States Steel Corporation by the Government and the contemplation by the Government of what was to be done with that plant and of the importance and paramount public interest involved.

Mr. WRIGHT. I am still not aware what relevance that has to any issues in this suit.

The COURT. I thought, Mr. Wright, that one of the contentions of the defendant was that one purpose of this consolidation or acquisition was to furnish an outlet for Geneva.

Mr. WRIGHT. Yes, but there is no dispute.

The COURT. Would not that involve or would it not make it admissible, the acquisition from the Government of Geneva and the reasons they did that?

Mr. WRIGHT: There is no claim, your Honor, that the acquisition of Geneva from the Government was improper. The legality of that acquisition is expressly conceded.

This, as far as we can see what he has read here, does nothing more than establish the obvious fact that the surplus property administrator had a plant on his hands which he tried to  
224—457 dispose of and in trying to dispose of it, he invited bids, and as a result got a bid and sold it to the Steel Corporation.

Those facts, I submit, don't need the consideration of reports to Congress by your Honor if they are relevant in order to be proven here. What I am trying to get at is why he offers this report to Congress:

The COURT: Is there an objection?

Mr. WRIGHT: Yes.

The COURT: Objection overruled.

Mr. MILLER: May the document be marked and then the reporter copy in the record what I read?

Mr. WRIGHT: I assume it would be judicially noticeable in any event as an official report.

Mr. MILLER: I think so, but it doesn't do any harm to have it in.

Mr. WRIGHT: My objection is based purely upon grounds of relevancy.

The COURT: I understand.

224—458 (The parts of the official report of Mr. Symington to Congress read as follows:)

**"LETTER OF TRANSMITTAL,  
SURPLUS PROPERTY ADMINISTRATION,  
Washington, D. C., October 9, 1945.**

The Honorable the PRESIDENT OF THE SENATE.

The Honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIRS: I submit herewith a report with respect to the Government-owned iron and steel plants and facilities, in accordance with Section 19 of the Surplus Property Act of 1944.

Respectfully,

(Signed) W. STUART SYMINGTON,  
Administrator."

**"Disposition of the Geneva plant**

"The investment of \$200 million in a fully integrated steel producing plant in Utah represents approximately one-sixth of the total wartime Government expenditures in iron and steel facilities. It represents steel production capacity of more than one million tons of steel a year in an area which, prior to the war, was chiefly supplied from outside producing centers. The Geneva plant was

primarily equipped for the mass-production of plates and shapes required by the wartime shipbuilding industry on the West coast. The design and lay-out of the plant, however, are such as to make feasible additional installations to provide for the production of a wide range of finished products by the most modern producing methods. Raw materials for operations at Geneva are from adjacent sources within the State of Utah.

"Particular interest and attention has been focused on the disposal of the Geneva steel plant, not only because it is the largest single disposal steel unit owned by the Government, but because it provides a local source of a basic commodity essential to the industrial growth of a relatively undeveloped area. Furthermore, it is one of the few Government-owned steel plants costing over 5 million dollars where there is no problem of scrambled facilities and upon which there is no purchase option commitment. Although the Geneva steel plant was built by the U. S. Steel Corporation and has been operated by that concern during the war period, there are no contractual provisions in the operating arrangements which restrict the disposal of the plant.

#### "Industry response to negotiation offers

"In connection with the disposal of the Geneva steel plant the Reconstruction Finance Corporation approached 27 of the 30 integrated steel companies capable of producing at least 300,000 net ingot tons per annum. (The remaining 3 companies, U. S. Steel Corporation, Kaiser Company, and Colorado Fuel and Iron Corporation, had already indicated an interest in the plant.) A letter, dated June 7, 1945, was addressed to each of these companies as follows:

"We (RFC) have given considerable publicity to the fact that the RFC is ready to negotiate with responsible operators for the lease or sale of the Geneva steel plant owned by it and located at Geneva, Utah.

"So far we have been approached by U. S. Steel Corporation, Colorado Fuel and Iron Corporation, and Kaiser Company, Inc., all of whom have expressed an interest in this plant.

"I would appreciate your advising us as to whether your company would like to discuss this matter with us.

"Replies were received from all but 2 of the 27 companies, and all of the replies were in the negative. No operating or purchase interest was indicated in any of them. In many cases, no reasons were given; in others it was stated that 'the plant did not fit into our postwar program,' 'the plant is located too far away from us,' 'the plant is out of our geographical territory,' 'our products and

experience are so entirely different,' 'we are not interested in open hearth production,' or 'the location and size of the investment puts this plant entirely beyond our scope.'

"U. S. Steel Corporation's position on Geneva

"In May 1941, the Government asked the U. S. Steel Corporation to construct the Geneva steel plant and later to operate 224-461 it. It did so without charge or fee. Both the construction and operation of the plant were given the full benefit of the construction, technical, operating, and administrative resources of the Corporation with effective and satisfactory results. From the start, the Corporation evinced a keen and sincere interest in the successful operation and development of this plant.

"In January 1945, the Corporation informed the Defense Plant Corporation that when the disposal of the Geneva plant came under consideration it would be interested in discussing a possible basis for the purchase or lease of the plant for operation as a part of Columbia Steel Co., a western subsidiary of the Corporation. The Corporation subsequently undertook a thorough study of the various factors concerning the possibility of purchase or lease which they were interested in discussing.

"On August 8, 1945, however, the Corporation notified the Defense Plant Corporation that it had decided to take no further action toward the acquisition of the Geneva steel plant, and that such decision was taken after a full consideration of the whole situation, including the various problems which seemed to it to be involved in attempting to establish the Geneva plant after the war as a sound and successful commercial enterprise. The above notice listed several statements by Government officials which in practical effect appeared to the Corporation to rule it 224-462 out as a prospective lessee or purchaser of the Geneva plant.

"At the same time as the notice of August 8, 1945, in which the U. S. Steel Corporation announced its negative decision concerning the acquisition of the Geneva plant, they announced a large expansion and modernization program for the Pittsburg, Calif., plant of the Columbia Steel Co. It is reported that this program will call for an outlay of \$25,000,000, and will include the installation of cold reduction facilities having an annual capacity of 325,000 tons of sheet and tin plate. Announcement was also made by the Steel Corporation that modernization of the Torrance plant of the Columbia Steel Co., near Los Angeles, was also being studied.

"Relative to the U. S. Steel Corporation, the Administrator's position was indicated in his letter of September 4, 1945, to Mr.

Fairless, president of the Corporation, in which he stated that the Reconstruction Finance Corporation and the Surplus Property Administration 'would be happy to consider' any offer by the Corporation to lease or purchase the Geneva plant.

"Colorado Fuel and Iron position on Geneva steel plant

"On June 14, 1945, the Colorado Fuel and Iron Corporation submitted to the Defense Plant Corporation a 'résumé of development program and immediate procedure for  
224-463 operation of the Geneva plant by the Colorado Fuel and Iron Corporation.' This program contemplated: (a) a lease to Colorado Fuel and Iron Corporation for the operation of the Geneva plant; (b) expenditures of \$73,000,000 by the Government for supplemental facilities including a sheet, strip, and tinplate mill, butt-weld pipe mill, a railroad freight car plant, a railroad steel car wheel plant, a railroad car axle plant, a railroad flat leaf and helical spring plant, and additional service facilities; and (c) production of 700,000 tons of finished steel products including structurals, plates, sheet and strip, tinplate, butt-weld pipe, and also railroad car axles, wheels and springs and freight cars and accessories.

"In a letter of July 24, 1945, to the Defense Plant Corporation, the Colorado Fuel and Iron Corporation indicated its intentions to prepare a tentative form of contract for discussion purposes.

"Since the date of this letter, there have been indications that the interest of Colorado Fuel and Iron Corporation in the Geneva plant would be merged with a Kaiser Syndicate, which is described in the next following section of this report. On August 24, 1945, however, the Defense Plant Corporation stating that it would proceed to prepare a definite proposal, and as soon as approved by the Directors, would submit it September 5th or 6th.

224-464 Such a proposal has now been submitted and is under consideration.

"Kaiser Syndicate position on Geneva steel plant

"On July 13, 1945, Henry J. Kaiser submitted to the Defense Plant Corporation a tentative proposal which contemplated: (a) a lease of the Geneva steel plant to a Kaiser Syndicate and a modification of the Geneva plate mill to roll hot strip at a cost of \$7,000,000 to be initially financed by the Kaiser Syndicate and subsequently to be applied in discharge of first rentals; (b) after certain financing developments on the Kaiser steel plant, the erection of a cold strip mill on the Pacific coast, at a cost of \$25,000,000; (c) the installation in Utah of a seamless and electric-welded pipe mill at a cost of \$25,000,000; and (d) the installation

in Utah of railroad car fabricating facilities, with steel wheel and axle plants at a cost of \$12,000,000.

"No subsequent proposal for the operation of the Geneva plant has been received from the Kaiser Syndicate.

#### "Disposal prospects and policy

"It would appear from the limited interest which has been developed in securing prospective purchasers or lessees for the Geneva plant that there are either limited possibilities for the post-war competitive operation of Geneva or that there is apprehension concerning the possibility of a reasonable price or acceptable financing arrangements.

224-465 "The steel industry is generally aware of the advantages of Geneva as well as the limiting factors which must be overcome before successful operation can be forecast. The principal advantages include:

"A substantial market in the West which is relatively heavily weighted with such profitable steel items as tinplate, pipe, and tubes;

"A market in which prices have reflected transportation charged from eastern producing points;

"Accessible raw materials bearing relatively low assembly costs;

"A modern, well-designed, efficient producing plant; and

"Market expansion prospects reflected by a rapid population growth and a high industrial expansion rate in the West.

"As against these principal advantage, the following possible limiting factors cannot be overlooked:

"There has been skepticism concerning the long-run adequacy of the ore reserves;

"The ability to economically coke Utah coal in the Geneva blast furnaces has not been evidenced by limited operating experience;

224-466 "The development of sufficient market outlets to justify continuous operation involves considerable risk;

"The uncertainty of commercial freight rates to principal coastal consuming points which are competitive with the cost of water transportation from eastern seaboard plants; and

"The possibility of capital costs which will be out of line with competitors because of the cost of reproduction of equivalent facilities, and the large investment in new facilities required.

"An economic and engineering study of the Geneva steel plant has been undertaken for the disposal agency. This will have to be completed before the specific nature of the uncertainties involving peacetime operation of the plant can be adequately determined or the full effect of a possible disposal policy properly

weighed. It must be emphasized, however, that the principal deterrent to disposal over which the Administration has substantial control involves the terms of sale or lease. In accordance with the objectives of the act, unreasonable capital costs will not be permitted to be a barrier to the disposal of Geneva.

"In the event that the economic and engineering study referred to satisfactorily sets aside those barriers to disposal which have an impact on operating costs, then the disposal agency will determine the valuation of the plant in such manner consistent with part III-C, as will make possible private operation by either sale or lease. Because undetermined freight rates may act as a barrier to disposal, insofar as practicable the disposal agency will consider proposals in which price is adjustable in accordance with the actual commercial transportation rate eventually established.

"As far as the acceptability of any past, present, or prospective purchaser of the Geneva plant is concerned, the Administration wishes to have it clearly understood that every reasonable offer from each potential purchaser or lessee will be given the most careful consideration on the basis of the individual merits of the proposal submitted. Insofar as alternative proposals, purchasers, or lessees are available for consideration, they will be weighed in relation to their conformity to the various objectives of the Surplus Property Act."

Mr. MILLER. I wish to read from the Congressional Record the testimony, just very briefly, a paragraph or two, of Mr. Symington before the Joint Committee of the two Houses on the subject of this very report.

Mr. WRIGHT. I haven't the faintest idea of what Mr. Symington is about to testify to through Governor Miller, but if it is relevant testimony, I suppose we ought to have some limits put on this business of simply reading in what somebody has said without an opportunity for cross-examination.

As I say, it is not clear to me. I must say, what the purpose of any of this is, but it may be that a purpose would develop which would require some cross-examination on our part.

We certainly object to his just standing up here and offering to read, as testimony in this suit, what somebody testified to before Congress.

Mr. MILLER. I am reading from an official public document printed by the Government of the United States, and I am reading it for the purpose not of proving, in effect, except that Mr. Symington said this at this public hearing by the Joint Committee of the two Houses of Congress. I am only offering it as proof that he said what I am going to read. I am not offering it as

proof of the fact. That sort of evidence, I think, has been repeatedly held to be admissible under the rule of the Federal Courts.

The COURT. Proceed, Governor.

Mr. MILLER. The question by Senator O'Mahoney—I am reading from page 15—

Mr. WRIGHT. May we have a copy of this document?

Mr. MILLER. I will let you have it when I finish. It is the only one I have got.

“Senator O'MAHONEY. In other words, you are not ready to subsidize any company to this extent?”

That refers to the request of some possible bidders to bid if they could be subsidized or if the Government would advance the thing.

“Mr. SYMINGTON. Certainly not in this industry. This is a competitive industry.

“However, the steel industry is an industry where an awful lot of money has to be put in, and the Surplus Property Administration feels that the best company to have purchase this plant would be the United States Steel Corp., because they have run it and it is tied up tight with their other mill on the west coast. I only mention that because there at one time seemed to be a feeling that we were opposed to the United States Steel Corp. We are not opposed to them.

“If there is any company in Utah, or any local interests, as we have said before, we would rather see the local interests come in. But after looking at it, we believe that they may be the only company in the steel industry that can carry on this operation unless the Government subsidizes. That is our position, sir.”

Mr. WRIGHT. May I ask what possible relevance Mr. Symington's statement in those words has to this case and to what issue is that relevant? What does it prove or disprove that is in issue here, the fact that he stated that? It is not offered for

224—470 evidence of any of those facts, but he said the fact that Mr. Symington said that to Congress. Where does that take us in the suit?

The COURT. Have you anything further to read into the record?

Mr. MILLER. Yes.

The COURT. I don't want to stop him from any ground of objection he has, and therefore, if you have no objection I will reserve Mr. Wright's liberty to object to it and move to have it stricken out tomorrow morning.

Mr. MILLER. Certainly.

The COURT. You have no objection, Mr. Wright, if he reads these into the record, reserving you the right to strike?

Mr. WRIGHT. Again the objection is the materiality and relevancy very largely. This material is clearly public property.

It is noticeable by your Honor or anybody else who wants to look at it.

The COURT. I have no desire to swell our record with any immaterial or irrelevant matter.

Mr. MILLER. I offer in evidence the report of the War Assets Administration to the Congress under date of May 10, 1946, of the bids on the Geneva plant.

Now, this is a document which contains all of the bids in full, and therefore, I want to offer the whole document.

The COURT. Have you a copy for Mr. Wright?

Mr. WRIGHT. What is it?

224-471 Mr. MILLER. It is the report of the War Assets Administration of the bids which were submitted for Geneva.

Mr. WRIGHT. Yes; I think I have a copy.

Mr. MILLER. That will be Defendants' Exhibit 64.

(Report of War Assets Administration to Congress under date of May 10, 1946, was received in evidence and marked "Defendants' Exhibit No. 64.")

Mr. MILLER. I also offer in evidence the report of the War Assets Administration made to the Congress on the 24th of May, 1946, reporting its action on these bids and its reason for such action. I offer the entire document, and I would like at this time to call your Honor's attention to only just one or two paragraphs.

Mr. WRIGHT. We have the same objection—irrelevant and immaterial.

Mr. MILLER. Yes; and a motion to strike.

(Report of War Assets Administration to Congress dated May 24, 1946, was received in evidence and marked "Defendants' Exhibit No. 65.")

Mr. MILLER. On page 2:

"The Geneva steel plant in Utah is the largest steel plant constructed by the Government to help meet war requirements for steel. It cost approximately \$191,000,000 including facilities of the iron mines, quarries, coal mines and other auxiliary service facilities from the time of its inception in 224-472 1941 and during its construction and subsequent operation. This plant has been of national interest particularly to the West and the West coast. Its prospective disposal by Government to private industry is likewise of outstanding national interest."

And on page 3 the report says:

"Considerable time was expended and every effort made to secure the best possible bid for the Geneva plant."

On page 4 it has stated among the reasons War Assets Admin-

istration gave the reasons why it accepted the bid of the United States Steel Corporation, and among others it said:

"It will encourage and foster postwar employment opportunities not only in the Geneva Steel plant but also in steel-consuming industries in the West.

"It will foster the development in the West of new independent enterprise. The production of steel at the Geneva steel plant should serve to develop additional consuming markets for steel products in the territory naturally served by the plant, particularly in this postwar period when many companies are reported to be considering the location of additional steel-consuming facilities. One of the most important factors from the standpoint of consumers of steel is to have an assured source of supply. The operation of the Geneva steel plant as a part of the integrated operations of U. S. Steel should tend to foster the location of steel-consuming manufacturing plants in the Western States."

I offer in evidence the opinion of the Attorney General under date of June 17, 1946, addressed to General E. B. Gregory, Administrator, War Assets Administration, Washington, D. C., to the effect—I offer the whole opinion—but it is to the effect that this proposed sale will not violate the Anti-Trust Laws, and I would like to call your Honor's attention now to the concluding paragraph. He says:

"In rendering this opinion, I am not unmindful that size carries with it the opportunity for abuse. To quote the language of the Supreme Court in *United States v. Swift & Co.*," citing the case:

"\* \* \* Mere size, according to the holding of this court, is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly," citing cases.

I offer the whole document.

(Opinion of the Attorney General was received in evidence and marked "Defendants' Exhibit 66.")

Mr. MILLER. That is all the documentary evidence I wish to offer.

The COURT. Reserving the right to Mr. Wright—

224-474-479 Mr. WRIGHT. I have no objection to his reading the opinion. I am still at a loss to understand how that opinion is relevant to any issue we are confronted with here.

The COURT. I remember Governor Miller mentioned it in his opening of the case where he had given us a résumé of it, and I was anticipating that he would follow it with some testimony.

Are we still to meet at 10 o'clock?

Mr. MILLER. I think it would be a good idea. I was hoping to conclude our evidence tomorrow if we meet at 10:00.

The COURT. Does the Government anticipate it will have oral evidence.

Mr. WRIGHT. I think we might have a half day of rebuttal on some tabulations here. I don't think there is much more than that.

The COURT. Recess until tomorrow morning at 10:00 o'clock.

(At this point the hearing was adjourned to Thursday, June 19, 1947, at ten o'clock a. m.)

224-480 Thursday, June 19, 1947, ten o'clock a. m.

Present: As before noted.

Mr. WRIGHT. If the Court please, before we go any further into this matter of all these Committee Reports and this Opinion and material that was read into the record yesterday with respect to Geneva, I would like an opportunity to state what the Government's position is with respect to this Geneva matter. So far I think you have heard only from Governor Miller on this question of what relation, if any, he thinks the circumstances of the Geneva acquisition has to do with this case, and I think it would be well, if your Honor is agreeable, to at this time go into at least in a preliminary way what our particular contentions are with respect to that matter.

The COURT. Of course, Mr. Wright, I will hear anything the Government has to say in the matter.

Mr. WRIGHT. I want to point out to your Honor first that in the Opinion of the Attorney General that was read the Opinion states this: This is a letter addressed from the Attorney General to General Gregory, who was the Administrator of War Assets Administration at the time that the sale of  
224-481 Geneva was made. Your Honor may have gotten the impression from what was said yesterday that Mr. Symington was then Administrator. Actually Mr. Symington had passed from the picture prior to the time the bids were made and closed.

This letter to General Gregory, a part of which Governor Miller read, states this:

"Accompanying your letter dated May 23, 1946, was a copy of the bid of the United States Steel Corporation together with a preliminary statement accompanying the bid by the United States Steel Corporation to War Assets Administration for the Geneva steel plant."

That refers to a bid statement which was made by the Steel Corporation at the time that they made the offer, which I assume will be in evidence, but which has not yet been put in evidence, which sets forth exactly how the corporation proposed to operate the plant, how much of the capacity would be tied to another

subsidiary of theirs, and how much of the capacity would be available on the open market.

Now, all of those facts were set forth in the bid because it was necessary in considering the bids for the Surplus Property Administrator to satisfy himself that the bid met the requirements of the Surplus Property Act, and you will note that these statements that follow on pages 2 and 3 of the Opinion, the Attorney General simply recites the findings of the price reviews which were  
224—482 made to give the assurance that the bid conformed to the purposes of the Act.

For example, on page 2 of the Opinion the finding headed "P" states, "It will foster the development in the West of new independent enterprise."

Well, subsection (p) of the Surplus Property Act itself recites one of the purposes of the Act as "To foster the development of new independent enterprise."

224—483 Now, then, at the conclusion of the recital of these findings which the Price Review Board made upon the basis of the representation made by the Steel Corporation when it is admitted to bid, the Attorney General states on page 2:

"I do not undertake to comment upon this transaction other than from the standpoint of my duty under Section 20 of the Act, namely, to furnish you my opinion as to whether the proposed disposition will violate the antitrust laws."

I think it is important in that connection for your Honor to know what Section 20 of the Act referred to says, and this is what it says:

"Whenever any disposal agency shall begin negotiations for the disposition of private interests of a plant or plants or other properties which cost the Government \$1,000,000 or more"—you will recall, it will appear, if it has not already appeared, that this particular plant cost the Government about \$200,000,000—"patents, processes, techniques or inventions irrespective of cost, the disposal agency shall promptly notify the Attorney General of the proposed disposition and the probable terms or conditions thereof. Within a reasonable time, in no event to exceed 90 days after receiving such notification, the Attorney General shall  
224—484 advise the Board and the disposal agency whether, in his opinion, the proposed disposition will violate the antitrust laws. Upon the request of the Attorney General, the Board or other Government agency shall furnish or cause to be furnished such information as it may possess which the Attorney General determines to be appropriate or necessary to enable him to give the advice called for by this Section or to determine whether any other disposition of surplus property

violates the antitrust laws. Nothing in this Act shall impair, amend or modify the antitrust laws or limit and prevent their application to persons who buy or otherwise acquire property under the provisions of this Act."

Then it states, as used in this section, the term antitrust laws included the Act of July 2, 1890, the Sherman Act, and a number of other related antitrust acts.

You will note that in the opinion, on the last page, in conformity with the provisions of the Act, the Attorney General states this after reciting the legal considerations which led him to determine that the disposition would not violate the antitrust laws. Incidentally, it appears from the latter that what he had before him was simply one bid, there was only one bid for the plant, the bid of the Steel Corporation, which the administrative agency found to be acceptable. The net result of this reluctance of the Steel Corporation and its competitors to bid for the plant

on any competitive basis was that the Steel Corporation was unable to purchase the plant on its own terms

for some \$42,000,000 plus assurances of certain additional expenditures, all of which will appear from the bid itself. I am merely pointing out the situation the Attorney General was confronted with in determining whether or not this particular disposition violated the antitrust laws, and that was that there was one bidder and it was a question of approving this bid if the plant was to be disposed of and operated.

Now, the statement at page 5 is this:

"In the light of the foregoing considerations and all the other pertinent circumstances of the case, I do not view the sale, as such, of this property by the War Assets Administration to the United States Steel Corporation as a violation of the antitrust laws. As the Department has previously stated in an opinion to you on a similar transaction, this advice does not extend to the conduct or the practices of the United States Steel Corporation in its use of the property, nor do I express herein any opinion concerning the legality or illegality of any acts or practices in which the United States Steel Corporation or its subsidiaries may have engaged or may hereafter engage, either alone or with others. My approval is subject to the further express condition that it shall be without prejudice to any pending or future determination, by or before any court or administrative agency jurisdiction, regarding the legal status of any pricing policy followed by the United States Steel Corporation or by any of its subsidiary companies, either alone or with others."

The last sentence refers to the pending basing point case in the Circuit Court of Appeals as to which we have introduced some evidence.

Then follows the paragraph which Governor Miller read to you, and then the concluding paragraph, which he didn't read, which states:

"The Department will continue to study and evaluate the activities of the steel industry with a view to preventing, eliminating, or redressing any abuses contravening the antitrust laws. Further, if the circumstances warrant, I propose to report to the Congress under Section 205 of the War Mobilization and Reconversion Act concerning the status of the steel industry."

Now, as to the theory of the defendants on which this material that so far has been offered is sought to be relevant and material, the theory is this, as I understand it.

224-487 Their contention is apparently that when they bought Geneva they bought with it some kind of limited immunity from the antitrust laws. That is to say, that insofar as whatever future transaction they might undertake was calculated to benefit Geneva, their argument is, as I understand it, that that gives the activity a special character which would make trade restraining aspects of the transaction which might otherwise violate the Sherman Act not violative of the Act, because there was a great public interest in the disposition of the plant in a manner which would insure its operation, and in order to insure operation it would be necessary for the corporation to purchase or require certain other facilities to give it an assured outlet for its products, and that therefore the Government is approving the sale of Geneva to them also inferentially or by implication gave an approval to such efforts as they might later make to secure outlets which would assure successful operation of the plant.

Now, that, as I understand it, is the theory of the defendants from the opening statement made by the Governor.

Now let us see what you are being asked to consider here when you are being asked to consider evidence of that kind in this suit, which is a suit limited entirely to the question of whether or not this transaction that they entered into last December violates the Sherman Act.

Now, assuming that you took all this evidence and 224-488 other evidence he offered, or that he had made out a conclusive case that those in charge of the disposal of the plant actually intended that the Steel Corporation when it bought Geneva should also go out and buy up independent fabricators in order to give Geneva an assured outlet for its plates, let us assume that that kind of evidence were offered to you, there is no possible ground that I can see on which that kind of evidence could be admitted or even considered by your Honor, because the Act itself authorizes no one to make any sort of a deal with the

Steel Corporation or anyone else which would give them any kind of immunity under the anti-trust laws for any purpose.

Now, it seems to me that before receiving any evidence which even pointed in the direction of some kind of implied or inferential approval at the time of the Geneva sale by Government officials of what they have ultimately done with the plant there would have to be some kind of a showing that there was Congressional authority for that kind of arrangements to be made either expressly or by inference.

Now, insofar as that might be thought as relevant to the question of whether or not it was a good thing in the public interest, to say to the Steel Corporation, "Why, yes, we want you to have this plant and we want you to operate it to full capacity, and if in order to operate it at full capacity you have to acquire other independent enterprises to give it assured outlets, then  
224-489 we think it is desirable to waive the question of anti-trust violation, because balancing the public interest in the enforcement of the anti-trust laws against the public interest in maximum operation of the plant we think that the antitrust laws should give way."

Now, that kind of question is one which simply is not before your Honor and could not possibly be before your Honor in this case. That kind of question and consideration of those factors that I am discussing were plainly for the consideration of Congress. Congress could, if it had wanted to, of course, have authorized some administrative agency to grant immunity or it could itself have granted a limited immunity for the purpose of achieving some objective they thought was publicly desirable. Of course, Congress has done that many times in the past in reference to antitrust laws. As a matter of fact, during the war period in the Smaller War Plants Act Congress gave express authority for the issuance of certain certificates which would grant could itself have granted a limited immunity for the purpose of achieving some publicly desirable war objectives. But there is not the shadow of a suggestion in any of this legislation that anybody could give any such immunity as the defendants are apparently claiming here as a result of the relationship between this acquisition and the operation of the Geneva plant.

Now, certainly before your Honor accepts evidence of the wide range which is involved in any attempt to consider  
224-490 what the relative public desirability is of competitive disposition of Geneva's products or a disposition partly to U. S. Steel subsidiaries and partly competitive that there ought to be something pointed to by counsel for defendants which would show you that you have some power to adjudicate that issue in this proceeding, and so far as I can see there has been nothing of that kind offered so far.

Now, of course the other objection that I wanted to point out to this reading of this Congressional material in evidence and the offering of the Attorney General's Opinion as an exhibit is that it is a very obvious attempt to give an evidentiary aspect to material which is obviously wholly argumentative. The defendants are of course perfectly free to make any argument that they want to spin out of Congressional materials or anything else to the effect, I suppose, that Congress intended to give them this immunity that they are now claiming, but in making such an argument properly considered, none of that material, Mr. Symington's testimony before Congress, is competent to be received here as evidence of anything whatsoever. The receipt of such material in evidence suggests the existence of factual or evidentiary conflicts which simply are not present in the case. I know of no case in which anybody ever offered in evidence an opinion of the Attorney General. The opinions of the Attorney General are published. They are available for anyone who wants  
 224—491 to look at them, and the offer of material of that kind in evidence only suggests that there is some dispute

as to whether or not he actually did render such an opinion or not; and I submit there of course is no dispute as to what the Attorney General said in his Opinion. There isn't any dispute before your Honor as to what anybody testified to before Congress in connection with the consideration of these matters or any other matters which Congress considered, and that in any event it is wholly improper to receive into the case as evidence material of this character even if your Honor were going to consider it in connection with argument. As I have already pointed out, there has been no basis suggested so far on which you could properly entertain it even as argument.

Mr. MILLER. If your Honor please, we don't contend, of course, that we purchased any immunity when we purchased the Geneva plant, and your Honor will not hear me suggest that even the Attorney General could waive compliance with the antitrust laws.

Now, counsel made one statement and I can hardly believe that he deliberately intended the plain inference from it, but if he did I very much resent it. He said that the U. S. Steel Corporation succeeded by the course it took in this matter in securing the Geneva plant on its own terms. Well, if there was nothing else to make the documentary evidence that I offered yesterday relevant, that statement would make it relevant, be-  
 224—492 cause that evidence discloses beyond per adventure of a doubt that after exhausting every conceivable effort by the Government to secure someone who would undertake the venture of operating the Geneva plant successfully, the Government was unable to dig up anyone who knew anything about the

steel business or who had any capacity to operate a steel plant that was willing to venture a dollar of its own capital in any such undertaking, and yet you hear counsel here, and I hardly think he can have intended it, inferring that by some kind of manipulation United States Steel Corporation had fixed up some kind of an arrangement with the steel industry as a result of which it got this plant on its own terms. It got it because it was an undertaking which no one else could be persuaded by the Government to go into.

224—493 I want to read just a little bit more than I did yesterday from Exhibit 65 as showing how pertinent this is, first, on the objective purpose of U. S. Steel in entering into this contract that is challenged. It bears directly upon that but also directly upon two other contentions made here by the Government as to the restraint of trade and commerce from a fact that part of the production of the Geneva plant will be tied up to the requirements of the Consolidated Company and a part of the requirements of the Consolidated Company will be tied up to the production of Geneva and thus that trade and commerce will be unreasonably restrained.

Among the reasons given by the War Assets Administration for the acceptance of the bid of the United States Steel Corporation—and, of course, counsel is quite right, I am obliged to him for reading the statute—of course, this is all tied in with the statute. The statute defines what the objective should be in the disposition of surplus property. This evidence shows how the administration carried out the objectives of the Congress. We purchased it to carry out those objectives, and we have entered into this contract for the controlling reason that it will assist us in carrying out the objectives not only of the War Assets Administration but of the Congress itself in its expressed provisions of the Act.

Now, these are the further statements of reasons  
224—494 for accepting the bid of the United States Steel Corporation.

“Additional facilities—The bid obligates U. S. Steel to spend \$18,600,000 of its own funds for additional facilities at the Geneva plant,” that is in addition to the purchase price of \$47,000,000 for the plant and inventories, “including facilities for the annual production”—here is the point—“of 386,000 tons of hot-rolled coils. The U. S. Steel, in its bid, further proposes to spend an additional \$25,000,000 out of its own funds for a cold reduction mill having an annual production of 325,000 tons of cold reduced sheets and tin plate to utilize the above 386,000 tons of hot-rolled coils.”

That is, it was spending \$25,000,000 for a cold reduction mill on the Coast to utilize and provide an outlet of the Geneva plant of the extent of 386,000 tons of rolled material.

"The U. S. Steel, in explanation of its bid, contemplates further expenditures out of its own funds for installations and changes at the Geneva steel plant in the future to meet changing market conditions or operating practices.

"Sound organization—The bid provides assurance that the operations of the Geneva steel plant will be soundly handled by qualified men of long standing and experience in the steel industry.

224—495 "The U. S. Steel designed, constructed, operated and is now maintaining, and, incident to such maintenance, is operating in a small way, the Geneva steel plant. This experience with the plant and the highly creditable performance during the period of such experience is of distinct advantage in the consideration of an award of the Geneva steel plant.

"The Columbia Steel Co., the subsidiary of the U. S. Steel which would probably operate the Geneva plant, should the award be made to the U. S. Steel, has sold steel products on the entire west coast for many years and has experienced executive, operating, and sales personnel, well qualified to operate the Geneva steel plant and to sell its products. Furthermore, it can draw on the over-all personnel of U. S. Steel for any additional personnel that may be needed."

Now, of course, this evidence is competent, as showing, and relevant and material. Of course, the competency is not challenged.

Mr. WRIGHT. It is most certainly challenged.

Mr. MILLER. Competency?

Mr. WRIGHT. Yes. Nothing that is in the report is competent to prove or disapprove anything.

Mr. MILLER. Counsel's idea of competency seems to be very similar to his idea of what is immunity from observance of law.

224—496 The relevancy and materiality of this evidence is, of course, a question that there can't be the slightest doubt about, the competency of evidence proved by official documents printed at the Government printing office.

In sum, the materiality and relevancy of this evidence will be followed—I mean the evidence itself will be followed—by evidence presently to be given to your Honor of the purpose for which this contract was entered into; and the statute, the acts of officials having responsibility for the disposition of the plant and our purposes in entering into the present contract, will be all tied together and all our material in understanding the ultimate conclusion which your Honor must finally draw in this case.

Mr. WRIGHT. One more word, your Honor. Counsel is attempting to tie together here things that simply aren't tieable, because

one of the aspects he is talking about goes to the question of whether or not the Surplus Property Administration exercised good or bad judgment in making the disposition.

Your Honor isn't sitting here, as I understand it, to review anything that the Surplus Property Administration did in connection with the disposal of this plant to the United States Steel Corporation.

There is no contention in the case at all that 224—497 anything that was done in that connection was improper. The legality of the acquisition of Geneva has been assumed from the outset, and what you are being asked to do, it seems to me, is to pursue a trail which simply leads nowhere in the determination of the issue you really have in front of you in the pleadings, and that is the question of whether or not this acquisition of Consolidated has a trade-restraining effect that is condemned by the Act.

Now, we have no desire to litigate in this case the motives of the Steel Corporation in acquiring Geneva at all. We have been perfectly willing to assume that they were of the purest order, but if we are going to go off into another litigation involving those issues—

The COURT. I didn't understand Governor Miller meant the motives in the acquisition of Geneva, but that this was admissible in the motives of the acquisition of Consolidated.

MR. WRIGHT. As to that, I say, it seems to me it is trying to avail himself of something that has no significance in law. We were prepared to assume—let us assume—that every acquisition the Steel Corporation ever made prior to this one was made with the purest motives that could not possibly justify this later acquisition if it were otherwise in restraint of trade.

That is why I say he is seeking to embark the Court 224—498 upon consideration of evidence which simply could not be relevant to the question the Court has to decide.

The COURT. May I ask you a question?

MR. WRIGHT. Surely.

The COURT. Purely for my own information. What is the difference between the admissibility in evidence and judicial notice which I take? I mean, what is the difference, in effect, if in drawing my opinion I have the right to take judicial notice of everything that is admitted in evidence? What difference is it whether it is admitted in evidence or whether I reach out judicially and notice it?

MR. WRIGHT. As a matter of substance, I don't think it makes the slightest difference. All I am suggesting at this time, it seems to me, when you permit the introduction of material of

this character as evidence rather than merely taking notice of it, it does give what is undoubtedly a false impression.

The COURT. Gives a false impression to me? I mean, if it is admitted in evidence. You mean it gives added weight to me?

Mr. WRIGHT. I assume, to your Honor, it makes no difference at all whether his argument is put in evidentiary form or whether he makes the argument with material that is judicially noticeable rather than evidence. I am merely suggesting that 224-499 there is no occasion really to admit it as evidence unless there was something in the back of your Honor's mind that suggested that maybe this was different from the ordinary argumentative material and would represent a matter in which the Government might be called upon to rebut. That is the only problem we have in the matter.

The COURT. I may be looking at it very incorrectly, but it is quite immaterial, except in augmenting the size of the record, whether it is in evidence or whether I take judicial knowledge of it. In my final disposition of the case it will arrive at no greater weight by reason of the fact that it has been added in evidence than if I took judicial knowledge of it.

It seems to me—I would not like to say this—but time is running out. I am not certain of the difference between the two, unless you can point it out to me without very much more expenditure of time.

Mr. WRIGHT. I have nothing more. I want to say, your Honor, we maintain the objection and move to strike the material as evidence.

The COURT. I understand that.

224-500 The COURT. I understand what we have said today is preliminary or is carrying out your motion to strike.

Mr. WRIGHT. Yes.

The COURT. I decline to grant the motion to strike. Not that I am accepting anything as evidence, you understand, but I just decline to strike. I am leaving it in for whatever it may be worth. It may be nothing.

Mr. MILLER. Mr. Finger has something he wants to put in evidence. I will wait.

Mr. FINGER. Yesterday Mr. Wright asked for some additional information in connection with Defendants' Exhibit No. 44. It has been furnished. We now offer it in evidence and I ask that it be marked as Defendants' Exhibit 44-A.

(The paper referred to was received in evidence and marked "Defendants' Exhibit 44-A.")

BERTRAM H. LAWRENCE, called as a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Mr. Lawrence, where do you reside?

A. Plttsburgh, Pennsylvania.

Q. What is your position?

A. Chief Engineer of the United States Steel Corporation of Delaware and Vice President of that corporation.

Q. What has been your experience briefly?

A. I have been engaged in engineering in one form or another for 41 years, beginning in 1906.

Q. With what company or companies?

A. All subsidiaries—all of my employment has been with the subsidiaries of the U. S. Steel or U. S. Steel itself.

Q. You are now head of that department?

A. Yes, sir.

Q. And have been for how long?

A. Since I was Chief Engineer in 1938 and elected to the vice presidency in 1941.

Q. You say you are Vice President of U. S. Steel of Delaware. That work comes under the particular function which that corporation discharges for all of the other subsidiaries?

A. Yes, sir.

Q. Will you tell his Honor very briefly what the functions of the Engineering Department are?

A. They cover two fields of activity. First, investigation and research into the soundness of making capital investments by the corporation; second, the execution of such projects as have been undertaken by the corporation in the construction of plants and facilities.

The Engineering Department does not undertake work for outside customers of the corporation or the subsidiaries.

224—502 Our work is confined solely to internal capital expenditures of the Steel Corporation for property.

Q. Do you have charge of designing and the making of plans for all of the construction of all of the facilities of the different subsidiaries?

A. Yes, sir.

Q. And in connection with that work is it necessary for you to know the requirements of these facilities, the market which each will serve, and its potentialities?

A. Yes, sir.

Q. Are you constantly engaged in market studies to determine those factors?

A. We are constantly engaged in reviewing market studies submitted by the subsidiary companies and by the market research of the corporation.

Q. Each of the subsidiaries carries on its own market studies?

A. Yes, sir.

Q. But they are all coordinated by you?

A. They are reviewed by us.

Q. Perhaps "reviewed" is better.

A. Whenever they have a bearing on a project, sir, if I might amend it.

Q. Do you know about the business of the United States Steel Products Company?

224-503 A. Yes, sir.

Q. What does it produce?

Mr. MILLER. That is one of the companies that the Government has asked for and obtained and put in evidence its sales during the past year.

A. Its principal product is steel barrels and drums.

Q. Yes.

A. To a lesser volume it produces what is known as hollow ware such as garbage pails, buckets, tubs, galvanized tubes usually; and a still smaller part of its production is garden tools, hand tools for gardening such as rakes and hoes and small equipment of that kind.

Q. Is the Consolidated Steel Company engaged in producing any of those products?

A. No, sir.

Q. Something is said in some list of products here of the Products Company about light tanks or counsel has referred to light tanks. Do you know anything about that?

A. Yes, sir.

Q. Tell us.

A. Prior to the war the Products Company made by hand some light tanks I think largely used for gasoline service station storage purposes, and a few tanks—I say a few, but I don't know how many, but made tanks for truck bodies hauling gasoline.

224-504 That work was discontinued, I think, the first year of the war. I am not quite sure of that, but it was discontinued about the beginning of the war.

Q. And they don't even make those?

A. No, sir.

Q. Does Consolidated make any of those kinds of things anyway?

A. Yes, sir.

Q. They do?

A. Yes, they make them currently.

Q. What?

A. They make them as a current production item.

Q. Now to return to the other subject, you designed the Geneva plant, didn't you?

A. No, sir, it was designed under my direction, if I may amend the answer, sir.

Q. Well, of course, when I say "you" I am now talking about your department.

A. Yes, sir.

Q. Then it was constructed under your supervision?

A. Yes, sir.

Q. Was that plant built solely for war purposes?

A. Yes, sir.

Q. Was its construction and location determined solely with reference to that and not at all for peacetime production?

A. Yes, sir.

224-505 Q. What was it constructed to produce?

A. Ship plates and ship structurals.

Q. Those products are what are known as rolled products?

A. Yes, sir.

Q. But in order to produce them I suppose I have to have more than a rolling mill?

A. Oh, yes, sir.

Q. Will you briefly just tell to the Court what the Geneva plant consists of?

A. It consists of a coal mine with a capacity of about 6,000 tons a day. It was designed for seven, but did not reach that figure. It has a limestone quarry and expansion in iron ore properties owned by Columbia Iron Mining Company not forming a part of the Government venture except to the extent that the Government provided the facilities of additional production of iron ore; four batteries of coke ovens for producing blast furnace coke out of the coal, three blast furnaces for making pig iron, nine open-hearth furnaces for producing steel out of the pig iron, a blooming or slabbing mill for rolling ingots into what we call the semifinished form which are slabs or blooms, 132-inch continuous plate mill for rolling plates together with all its finishing requirements, shearing and loading, and a 26-inch structural mill. The plate mill has a rated capacity of 750,000 tons a year and structural mill of 250,000 tons.

224-506 Q. Were those capacities determined upon to meet the demands for the construction of ships?

A. Yes, sir. The product was intended largely for use by the Maritime Commission.

Q. Do those capacities have anything to do or were they determined upon with any relation whatever to peacetime use?

A. No, sir; none whatever.

Q. Well now, did you in the early part of 1945 conduct studies

to determine the possible or probable market demand peacetime for Geneva's products with the view of determining whether it could practically be operated commercially for peacetime use?

A. Yes, sir.

Q. Will you just state to his Honor what studies you made?

A. We reviewed our estimates of the steel consumption on the Pacific Coast, the types of products, and the volume of each product, and decided from those reviews and studies that Geneva offered no attractive possibility for use in commercial or peacetime business.

Q. Because of the limited market?

A. The limited market. As a typical example it had a capacity of 750,000 tons of plates, and as we estimated it the total plate consumption on the Pacific Coast, as I recall, was about 225,000 tons. The grand total consumption by everybody that was, so that Geneva's plate mill alone had fully three  
224-507 times the capacity of the normal consumption on the Pacific Coast.

Q. In the making of those studies were the sales organization and the Accounting Department also called in?

A. Columbia's sales organization was asked to review the figures and the Delaware accounting gave us some figures.

Q. Well, did there come a time when you were called upon by the Board of Directors of United States Steel Corporation to advise it as to whether it would undertake to acquire the Geneva steel plant?

A. Yes, sir.

Q. And do you remember about when that was with reference to VJ-day?

A. I think the first time was just before VJ-day or thereabouts. It was in the early part of 1945 or middle of 1945.

Q. I am advised that it was in August 1945. Would that correspond to your recollection?

A. Yes, sir.

Q. What advice did you give the Board?

A. I advised against acquisition of Geneva.

Q. For what reason?

A. Too speculative a venture for the amount of money that would be required to develop it, lack of an assured market.

Q. You heard me read something here from Exhibit 65 in reference to the production at Geneva, possible production of hot rolled coils for a plant on the Pacific Coast.  
224-508

Had you at that time made plans and were you then getting estimates for the construction by the Columbia Steel Company of a cold reduction mill at Pittsburgh, California?

A. Yes, sir.

Q. And where did you advise that these 380,000 tons of hot rolled coils should be procured from?

A. Birmingham, Alabama, from the Tennessee Coal, Iron & Railroad Company.

Q. The corporation already had facilities there for that purpose?

A. Yes.

Q. With some slight additions?

A. We added one blast furnace.

Q. That is, your plans added one?

A. Yes.

Q. Did you advise it would be a much more economical and profitable proposition for the corporation for the Columbia plant to acquire its hot rolled coils from Birmingham to be shipped by water than to make a very large additional investment at Geneva for that purpose? Did you so advise?

A. I did, sir.

Q. Were you called upon in the early part of 1946 to make another study of this same subject?

A. Yes, sir.

224-509 Q. You understood that in August 1945 the Steel Corporation Directors following this advice that you gave decided not to undertake to acquire Geneva?

A. That is correct.

Q. Were you in the early part of 1946 requested to reexamine the subject?

A. Yes, sir.

Q. Do you recall that the War Assets Administration or Reconstruction Finance Corporation—I don't remember just exactly the one that did it—had called for bids for the Geneva plant?

A. Yes, sir.

Q. Did you again make a complete and careful review of the subject?

A. Yes, sir.

Q. Do you remember if you were again called before the Board of Directors to advise them on the subject?

A. Yes, sir.

Q. Can you fix the month that that occurred in?

A. I believe it was April 1946.

Q. To be exact, it was April 30, I am advised, 1946. What advice did you give then?

A. I advised against acquiring Geneva or attempting to acquire Geneva.

Q. You gave the same advice you had given the year before?

224-510 A. That is right, sir.

Q. That time they didn't follow your advice?

A. No, sir.

224-511 Q. You knew when the bid was accepted and the transaction was consummated by the sale or the purchase of the plant and property by U. S. Steel?

A. Yes, sir.

Q. Did you immediately set about to devise ways of making that thing go?

A. Yes, sir.

Q. What was one of the first things you took up?

A. The diversion of the hot-rolled coil load from Birmingham, Alabama, to Geneva, to provide a base load for Geneva.

Q. What next?

A. We again looked into the structural market to see if we could make changes in the structural mills or increase its rolling range, and other things, to make it cover a wider spread in the market.

We also investigated the possibilities of making pipe at Geneva, splice bars and tie plates; see what changes would be required and additions necessary to produce those products, and thoroughly investigated and planned the modification of the existing plate mill to produce hot-rolled coils. The mill, as it now stands, is not suitable for that purpose.

Q. Did you consider doing anything else in order to supplement the backlog that the Pittsburgh cold production

224-512 plant would supply?

A. Yes, sir.

Q. What?

A. We investigated the possibilities of building two fabricating plants on the Pacific Coast, one at Los Angeles and one at San Francisco. That work was done by the American Bridge Company under our request.

Q. Did you go so far as to actually tentatively locate sites?

A. Yes, sir.

Q. Why did you do that?

A. We tried to develop an assured load for the structural mill at Geneva. The loads that we could estimate, probable postwar normal, would not put more than 62% usage on Geneva, 62% of capacity. That was, in my opinion, dangerously close to the break-even point or right on it, which indicated that additional loading had to be dug up for the plant somewhere.

Q. Had American Bridge Company made plans and actually submitted appropriation requests to the Delaware Corporation for the construction of structural mills on the West Coast some time before that?

A. Yes, sir; they had made plans and submitted estimates and an appropriation requesting a tentative form for review.

Q. How long before?

224—513 The Court. Before what, gentlemen?

Q. Before the time you are speaking of now, in the summer of 1946, following the consummation of the transaction with the Government.

A. I would have to guess at that, Governor. I think it was about a year and a half or two years. I am not sure.

Q. Why did you consider the construction of structural mills important to add to Geneva's backlog? What difference did it make in that respect whether you had a mill of your own or whether you supplied the material to other fabricators?

A. We needed more assurance, I felt, through having our own sales organization out after business than to depend on the ability and the aggressiveness of smaller outfits over whom we could exercise no energizing influence, if that is a good word.

Q. That is not a bad word. The corporation had had experience in this field from the very time of its organization?

A. Yes, sir; so I understand.

Q. You know, don't you, as long as you have been connected with them?

A. Yes; as long as I have been connected with them.

Q. That is quite a while. And the Steel subsidiaries produced the rolled steel products?

A. Yes, sir.

224—514 Q. And sold them generally to fabricators?

A. That is correct.

Q. And it also was in the fabricating business itself?

A. Yes, sir.

Q. And had been during all that period?

A. Yes, sir.

Q. And I assume you had gained some knowledge of the way those two operations combined and assisted one another?

A. Yes, sir.

Q. And as a result of your experience did you decide that in order to assure the Geneva Steel plant being able to operate even at break-even, that it was important for the Steel Corporation to go into the fabricating business on the West Coast?

A. Yes, sir.

Q. Did you communicate that conclusion to Mr. Fairless?

A. Yes, sir.

MR. WRIGHT. I don't like to interrupt, but if the Court please, there is no dispute as to the case, as far as we are concerned, that this is a very profitable acquisition for the Corporation. We don't question, in any way, these claims of sound business judgment that

entered into the transaction. As far as we are concerned, we assume that the judgment of the Corporation was unimpeachable to the effect that they would be better off with this acquisition than without it. It simply has no relevance, as far as we are concerned, whether or not the acquisition violates the antitrust laws. In any event, it is not any issue we want to dispute.

The COURT. I understood that the basic question is whether it is in violation of the Act. But what is one of the elements in determining that? The purpose for which they go into the contract.

Mr. WRIGHT. Well, insofar as the purpose is a purpose to improve the prospects of the business. I suppose that is inherent in any kind of transaction which replaces the competitive situation with one which tends toward monopoly.

Monopoly is a profitable business arrangement. There is no question about that. All of these transactions have, as a motivating force, I suppose, the desire to be financially better off, to have a more stabilized market, and in that way improve the prospects of the business. In any event, there is no disposition on our part in this suit. We haven't challenged at all the fact that this transaction undoubtedly has this effect.

The COURT. It is not so much your objection to the testimony that it is inadmissible, except that it may be redundant or unnecessary.

Mr. WRIGHT. I object on both grounds. In the first place, we say the fact is irrelevant that they thought it was profitable to do this thing or that it was desirable from a business standpoint.

We say, in the second place, there is no issue in dispute as to that. You may assume that it was a profitable thing for them to do.

The COURT. I can see some purpose, Governor. I thought perhaps you could shorten it by eliminating some of it.

Mr. MILLER. I am going to be very brief, but it seems to me this goes right to the very crux of the question of purpose, the purpose being to provide a backlog for this plant:

Whether or not that was a sound business purpose and whether that was the controlling purpose will be one of the two questions of fact I apprehend that your Honor will ultimately have to pass on in deciding this case—Was this transaction entered into, the challenged transaction, for sound business reasons?

Now, I am undertaking to establish that it was not only a sound business reason but was a compelling reason if the Geneva plant was to be operated to carry out the very purposes for which it was sold to the United States Steel Corporation.

The COURT. You don't contend, Governor, do you, that even though it was entered into for sound business reasons, 224—517 yet it was still in violation of the Act?

Mr. MILLER. No.

The COURT. Of course not.

Mr. MILLER. I only say that is one of the elements. I don't say that you can violate the law because you think you have a good reason for doing it. Not at all.

The COURT. No; I didn't think so.

Mr. MILLER. I am going to shorten it as much as I can, but I think this is quite fundamental.

The COURT. You may proceed.

Mr. MILLER. Will you read the question?

(The last question and answer were read by the Reporter as follows:)

"Question. Did you communicate that conclusion to Mr. Fairless?"

"Answer. Yes, sir."

By Mr. MILLER:

Q. Now, following that did you learn that Mr. Fairless was in negotiation with Mr. Alden Roach, the president of Consolidated?

A. Yes, sir.

Q. And was a committee appointed to study the plants of Consolidated?

A. Yes, sir.

Q. And business?

224—518 A. Yes, sir.

Q. That would be in the summer of 1946, I take it?

A. That is correct.

Q. Who were on that committee?

A. A. V. Weibel, from my office; L. A. Paddock, former president of the American Bridge Company, then retired—

Q. He had just shortly retired, hadn't he?

A. Yes, sir.

Q. Was he also president of the Virginia Bridge Company?

A. Yes, sir, and Mr. Walker.

Q. Who was he?

A. He was the supervising auditor of the Delaware Corporation.

Q. Did that committee make an examination on the ground and a report?

A. Yes, sir.

Q. Do you recall that subsequently a committee was appointed by Mr. Fairless to conduct the negotiations with Mr. Roach?

A. Yes, sir.

Q. Who was that committee?

A. Mr. Howell, vice president of the Delaware Corporation; Mr. Rooney, vice president-comptroller of the Delaware Corporation, and Mr. Blough, general attorney.

Q. This gentleman sitting here [indicating]?

224-519 A. Yes, sir, and B. H. Lawrence.

Q. Yourself?

A. Yes, sir.

Q. Did you conduct those negotiations?

A. I participated in them. We did conduct the negotiations.

Q. You are quite right in correcting my language. It is not always accurate. I am very much obliged to you to have you use accurate words when I perhaps fail to do so.

Your participated in those negotiations. When did they take place, just roughly?

A. I think that was in—

Q. December, 1946?

A. Somewhere late in the year, Governor, but I can't remember whether it was November or December.

Q. To cut this as short as possible, I am going to ask you to tell us in your own way—and you would use much better language than I would—I am going to ask you to tell his Honor just how you arrived at the purchase price.

A. I can state it bluntly, that that was the least amount of money that we could coax Consolidated into taking. We really checked to see whether it was within reason or not on two counts.

We had estimated the volume of business that we could do if we owned Consolidated, out of the Consolidated properties, and estimated the benefits, the net cash benefits, earnings; capitalized that at six, seven, eight, 224-520 nine, and ten percent and decided that about eight percent would be a pretty fair return on the investment; worked that back into the price we could afford to pay Consolidated.

The other approach was to look at, investigate, the reports made by this committee and decided that a 200,000 plant such as Consolidated had would probably cost, at present prices, about \$14,000,000 to build and it would take three years to build it. The present properties were about 30% depreciation, so we took 70% of the \$14,000,000, which gives \$9,800,000. We knew we had to spend about \$1,000,000, if we acquired the properties, on the properties themselves due to certain things we didn't like about them, principally safety and sanitation matters and so on; deducted that from the \$9,800,000 and said that is a pretty close check, which would give about an \$8,800,000 value.

Q. Was that the maximum that you proposed to go?

A. No, sir. After a little discussion we decided that \$8,500,000 was high enough, among ourselves.

Q. So you set the maximum at \$8,500,000?

A. Yes.

Q. The actual figure finally negotiated was \$8,250,000?

A. About \$8,250,000.

224—521 Q. On what basis did you arrive at that? Did it include anything except what you determined to be the fair value of the physical property?

A. That is right.

Q. Was anything allowed for good will?

A. No, sir.

Q. Now, before this first committee that you have spoken of was appointed—I may be wrong, you check me about that—but after this subject of acquiring Consolidated instead of constructing your own fabricating facilities came up, were you again called before the Board of Directors to give advice?

A. Yes, sir.

Q. Was that before or after this committee was appointed to study the plant?

A. That was after the committee had studied the plant.

Q. That was afterwards. What advice did you then give the Board as to the acquisition of the Consolidated Steel Company?

A. I advised that we should attempt to acquire Consolidated Steel.

Q. Why?

A. To assure, give greater assurance, of a load for the Geneva plant.

224—522 Q. And do you recall that the Board did authorize negotiations with Mr. Fairless to conduct negotiations for that purpose?

A. That is right.

Q. Do you recall the incident as you were leaving the room that day when you gave that advice of being asked something about your previous advice?

A. Yes, sir.

Q. State it to his Honor. What was said?

Mr. WRIGHT. If the Court please, I think we are pretty far afield.

Mr. MILLER. It bears on the advice he gave.

The COURT. I am not quite clear how this is admissible.

Mr. MILLER. It might be hearsay, except that the advice given to the party by the engineer, the Board who determined the question, I claim is very, very relevant as bearing upon their motives.

The COURT. This is purely hearsay, it seems to me, some remark made at that time. I sustain the objection.

Mr. MILLER. I will put it so you will see it is not quite hearsay.

Q. Did you explain to the Board why you had previously advised against the acquisition of the Geneva plant and was then advising, apparently contrary to that, that they acquire Consolidated? Did you give the Board the reason for that?

224—523 A. Yes, sir.

Q. What was it?

A. I told them that we had to get an assured load for Geneva, a permanent supportable load.

Q. Anything further?

A. No, sir.

Mr. MILLER. That is all. You may examine.

The COURT. I think this would be a convenient time to take a five-minute recess.

(At this point a brief recess was taken.)

224—524

Cross-examination by Mr. WRIGHT:

Q. Mr. Lawrence, in your direct testimony I believe you referred to Consolidated as a plant of 200,000 tons capacity?

A. That is our rating, our rating.

Q. Of Consolidated?

A. Yes, sir.

Q. What is your rating of the tonnage capacities of the American Bridge Company and Virginia Bridge Company?

A. You got me there, sir. I can't remember the figure.

Q. Have you got it approximately?

A. I think about 40,000 a month in American Bridge and 4,000 in Virginia. Probably about 600,000 tons a year. That is a pretty uncertain figure, sir. I have it in the files.

Q. That is your approximate figure?

A. Yes.

Q. You say you could give us a more accurate figure?

A. Oh, yes.

Q. We would like to have that if you could.

You also, I think, referred to some estimates you made of potential sales volume of Consolidated?

A. Yes, sir.

Q. Have you got those?

A. I can give you the actual figure there. I remember it. It is 132,000 tons a year.

224—525 Q. Did you make any of those sales estimates in terms of dollar volume?

A. Yes. Do you want the amount, sir?

Q. Yes, I wondered what that 132,000-ton estimate was in dollar volume.

A. In round figures \$22,000,000.

Q. Mr. Lawrence, are you familiar with a publication called "Thomas's Register of Manufacturers"?

A. No, sir.

Q. I want to ask you some questions about the products that were listed there as having been made by Consolidated and the Steel Corporation subsidiaries in 1945.

Mr. MILLER. Are you now giving evidence?

By Mr. WRIGHT:

Q. In that year did the Steel Corporation or any of its subsidiaries make any gasoline or fuel tanks, storage tanks?

The COURT. What year was this?

Mr. WRIGHT. 1945.

A. I don't know, sir.

Q. Do you know what the plant of U. S. Steel Products Company that was formerly operated as Boyle Manufacturing Company at Los Angeles was making then in that year?

A. They were making, of course, barrels, and I believe some ammunition containers or gasoline containers for the 224—526 Army. I think it was these—I am trusting to memory now, sir. I think it was these five-gallon containers hung on the sides of jeeps and Command cars.

Q. In any event, they were then making products of that description—that is, gasoline and fuel tanks?

A. Not in the sense that the word is usually—as I usually use the word. Gasoline and fuel tanks are usually those things that you put down in the ground at filling stations. These are cans rather than tanks, sir.

Q. In any event, these were items that they were then making. Now, do you know whether Consolidated was making similar items at that time or not?

A. No, sir.

By Mr. MILLER:

Q. Do you know or weren't they?

A. Sir?

Q. Did you mean your answer that you don't know or that they were not?

A. I don't know, sir.

By Mr. WRIGHT:

Q. How about iron and steel tanks generally? Those are made by the Bridge Company today, aren't they?

A. Not as a customary product, sir.

Q. They do make them, though?

A. I don't recall one, but they might have.

224-527<sup>a</sup> Q. They have the capacity to make them?

A. No, sir; not commercial facilities. They would make them in a machine shop or by hand largely if they did.

Q. Do you know whether or not Consolidated makes similar tanks?

A. They do make tanks, yes, sir.

Q. Of the same kind you have been talking about as those that American Bridge Company might make?

A. I am not sure about the American Bridge. I don't think they do.

Q. Well, do you know?

A. I do not.

Q. As to storage tanks, that is also a product that is produced out at the Boyle plant?

A. That is the same commodity we are talking about, gasoline storage tanks for filling stations, underground?

Mr. MILLER. Cans.

A. (Continuing.) No, sir; this is the tank that they stopped making early in the war. Boyle made a few tanks, gasoline storage tanks, prior to the war.

By Mr. WRIGHT:

Q. When is it that you say Boyle made the last of these so-called underground tanks?

A. I think it was about 1941 or 1942. I don't know accurately.

224-528 Q. Do you know whether or not they are actually making any today or not?

A. I do not.

Q. They may be?

A. I don't think so.

Q. As far as you know they have the capacity to make them today, haven't they?

A. They can make them the same way they did.

Q. The same capacity now as they had then, and as to whether or not they are utilizing that capacity or the extent to which it is being utilized you don't know?

A. No, sir.

Q. Are you familiar with this manual on the making, shaping, and treating of steel that the corporation puts out? Do you have anything to do with that?

A. I have nothing to do with the writing of the book. I know what the book is, sir.

Q. There is one thing I wanted to clear up. It was testified in connection with Mr. McConnor's testimony yesterday, and perhaps you can do it.

I call your attention to this 1941 issue of this book, "The Making, Shaping, and Treating of Steel" published by Carnegie-Illinois Steel Corporation. That is your principal rolling subsidiary?

A. That is correct.

224—529 Q. At page 1323 they have the statement under the heading "Section 3, Electric Welded Pipe, Application of the Process: Large diameter pipe in sizes beyond the practical limit of the seamless process" is fabricated by means of electric welding at the Christy Park Works of the National Tube Company."

Do you know whether that information was correct or not as of that date?

Mr. MILLER. Why didn't you ask Mr. McConnor?

Mr. WRIGHT. I should have. I forgot to do it.

Mr. MILLER. He is still here. He is the man who can tell you.

Mr. WRIGHT. I would rather examine him instead, but I simply want to clear up what is an apparent discrepancy.

Mr. MILLER. If the witness knows.

A. I don't remember the date, sir. I know it was scrapped.

By Mr. WRIGHT:

Q. You don't know when that was?

A. That is the point. I don't remember the date.

By Mr. MILLER:

Q. But you do know it was scrapped?

A. Yes, sir.

Mr. WRIGHT. Is Mr. McConnor here?

Mr. MILLER. He is right here. Finish with this witness first.

Mr. WRIGHT. We are finished with him.

224—530 Redirect examination by Mr. MILLER:

Q. This can or storage tank manufacture of the Steel Products Company, whenever it happened, was it ever of any consequence?

A. No, sir. There are two things go into—the can is the 5-gallon gasoline container that was developed for war purposes and go on the side of tanks, jeeps, and so on. Boyle made, as I recollect, a number of those on a war contract. The gasoline storage tanks which they made is the underground tank, light gauge steel tank that is under every gasoline filling station. Boyle made those by hand at one time. My recollection is they discontinued it somewhere around 1942.

Mr. MILLER. That is all.

Re-cross-examination by Mr. WRIGHT:

Q. But you don't have any positive knowledge on it?

A. I do not, sir.

Mr. WRIGHT. That is all.

224—531 WILLIAM F. MCCONNOR, recalled as a witness, having previously been testified, testified as follows:

Cross-examination by Mr. WRIGHT:

Q. You are the Mr. McConnor who testified here yesterday?

A. That is correct, sir.

Q. I show you this passage in the book "The Making, Shaping, and Treating of Steel" that I called to Mr. Lawrence's attention, and ask you whether that was a correct statement in there as of 1941?

A. You are referring to this under Section 3, Electric Welded Pipe?

Q. Yes; a statement about the production of the welded pipe at the Christy plant.

A. You don't want me to read this, do you? Do you want me to read this first and then tell you?

Q. Yes; read it to yourself. It has already been read into the record.

A. Yes, sir; I have read it.

Q. Can you tell me whether that was a correct statement there as of 1941?

A. That is not a correct statement as of 1941. The plant was scrapped in 1940. All the equipment was torn out and physically scrapped.

224—532 Q. The reason for that statement was simply what?

The Tube Company did not advise Carnegie-Illinois that it had scrapped the plant at that time?

A. Well, this book has been written for years and it is reprinted. I don't know the date on this, but I take it—

Q. I just call your attention to the preface, an acknowledgment there in which it says, "Special thanks are due the officials and associates of the United States Steel Corporation and subsidiary companies for up-to-date information relating to their processes and products."

Now, as to that you say that was information that was then nine years old or eight years old?

A. I don't know what you mean by eight or nine years old.

Q. As I understood your direct testimony, your testimony now is that notwithstanding what appears in the book there actually you had not made any such welded pipe as they are talking about there or pictured there at your Christy plant since 1932 or 1933?

A. I don't recall the exact question. There are two plants, you understand, one with large diameter going up to 96, which we call the Job Shop Plant.

Q. That was where?

A. That was also at Christy Park, and the other one was a plant to make 14-inch to 30-inch. I don't recall the exact question, but I said, I believe, I said there was no special quantity made or none made and that the plants were actually physically scrapped in 1940 when we scrapped them and put in equipment for making bombs and shells and rockets. I have definite knowledge, my own personal knowledge, that the equipment was very definitely, in both plants, scrapped in the year 1940. There is no question about that.

Q. The other question I have is on this date on which you actually had stopped making the pipe.

A. The statement that I recall from yesterday, which I think is a matter of record, is I said at some time between 1932 and 1940 when we scrapped the plant we discontinued the making of the pipe. I don't recall exactly what month or year we discontinued making it, but I can tell you that any tonnage that we made between 1932 and 1940 was very small, very small.

Q. But as to when you actually stopped making it, how long before scrapping the plant that was you are not in a position to say?

A. Sometime between 1932 and 1940. I am not in a position to say definitely. That is correct, sir.

Mr. WRIGHT. That is all.

224-534 ALDEN G. ROACH, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ALFRED WRIGHT:

Q. Will you state your name, please?

A. Alden G. Roach.

Q. Where do you reside, Mr. Roach?

A. Pasadena, California.

Q. You are the president of Consolidated Steel Corporation?

A. I am.

Q. You are also an engineer by profession?

A. Yes, sir.

Q. Where did you receive your engineering training?

A. University of Illinois.

Q. When did you first become connected with the steel fabricating business?

A. In 1927.

Q. With what company was that?

A. Union Iron Work of Los Angeles, California.

Q. How long were you with that company?

A. About a year and a half.

Q. In what capacity?

224-535 A. In various capacities, as a production employee in the shop, as a fitter, millwright, as a designer and as a salesman.

Q. After you left there to, what company did you go?

A. Consolidated Steel Corporation.

Q. In what year?

A. 1928.

Q. How were you first employed there?

A. As manager of the Industrial Building Division.

Q. Will you tell the Court, please, what your various positions have been with Consolidated between that time and the present and what your duties were with each?

A. Yes. I continued in that position until I was made manager of the Structural Steel Division. The next change—

Q. About how long was that?

A. That was about a year and a half.

Q. What were your duties as manager of the Structural Steel Division?

A. To promote the sale of structural steel and to institute the preliminary engineering work involved and to generally supervise the estimating.

Q. Did you have anything to do with the supervising of design in that particular position?

A. In the preliminary field, yes.

Q. What was your next position with the company?

224-536 A. Sales manager with the company.

Q. And you became sales manager when?

A. In 1934.

Q. You continued as sales manager for how long?

A. Until 1936, when I was made vice president in charge of sales.

Q. How long did you occupy that position?

A. Until 1938, when I was elected a director of the company, and the latter part of 1938 I was elected Executive Vice President of the company.

Q. And you were Executive Vice President for how long?

A. Until 1941, September 1941, when I was elected President of the company.

Q. And you have been president ever since?

A. Yes, sir.

Q. When I refer to Consolidated Steel Corporation or to Consolidated, I intend to include its subsidiaries, Western Pipe &

Steel and Steel Tank and Pipe Company and Consolidated Steel Corporation of Texas.

Now, is Consolidated engaged in both the structural and the plate fabricating business?

A. Yes, sir.

Q. You hear Mr. Lawrence testify a few moment ago that he estimated the capacity of Consolidated's plant at 200,000 tons per year. Does that include, do you know, both structural and plate fabrication?

A. I assume that his calculations included that. From my standpoint, it would have to include that, because our structural capacity is nowhere near that great.

Q. You estimate that your structural and fabricating capacity is as high as 200,000 tons per year?

A. The figures are very difficult to put your finger on. It depends upon what type of fabrication of both structural and plate that we indulge in. But under certain circumstance we could do 200,00 tons.

Q. Will you raise your voice just a little, please, Mr. Roach? What are the principal products that Consolidated turns out?

A. Fabricated structural steel such as bridges and buildings from its structural plants, any industrial structural frames that are required that we can pick up under contract to fabricate, and out of its plate shops it fabricates a multitude of various plate products.

Q. Such as what?

A. Such as pressure vessels of all kinds.

By the COURT:

Q. What did you call that?

A. Pressure vessels of all kinds for the oil industry or the gas industry or anybody that wants a vessel, and, your Honor, by a vessel I mean a cylindrical container of generally considerable size with, and in most instance, a curved head, a semispherical or elliptical head at each end; towers of various kinds made out of plate, again with curved heads at each end; of considerable diameter, such as bubble towers, cracking towers and equipment of that type; plate products of that type for the oil industry.

In addition to that we make some butane tanks, and we makes various types of miscellaneous plate products as, for example, a pressure head for Boulder Dam that was somewhere between 25 and 30 feet in diameter for fastening onto the penstocks at Boulder Dam for accomplishing the field test for those penstocks. It was a very complicated plate job. That was done there. In

fact, any type of plate work that we can secure, we will take into that plant.

Q. How many plants does Consolidated operate?

A. Eight plants.

Q. Will you describe them, telling the court the location and giving a general description of their facilities, please?

A. The home plant, or the largest plant, is the Maywood, California, plant. It is on the outskirts of the little town of Maywood and really the outskirts of Los Angeles.

It employs, at the present time, about 2,300 men, and it has within its boundaries a structural plant, a heavy plate plant, a machine shop, a plant that we call our 224-539 miscellaneous plant, where we do all sorts of sheet metal work and do a great deal of experimental work, sort of a catch-all for miscellaneous activities; and in connection with the heavy plate plant, a hot shop where we have some presses and slabs for hot bending metal of various kinds, and then a rather large warehouse that we use for, at the present time, accumulation of equipment that has become surplus from the war activity.

Q. By the way, I didn't ask you this. Does Consolidated produce any rolled steel products whatsoever?

A. No, sir, it does not.

Q. What are the other plants that you have in the Southern California area?

A. We have the Vernon plant, which is a suburb of Los Angeles, of the industrial district of Los Angeles, the Vernon plant of the Western Pipe & Steel Company, which is ostensibly a plate plant.

It employs about 850 men. Its products are plate products and similar to the type of plate products manufactured, that have been manufactured, at the Maywood plant, such as these pressure vessels that I spoke of, also including cement kilns, corrugated culvert, water well casing and miscellaneous products.

Q. What area, would you say, does the Vernon plant serve, generally speaking?

224-540 A. The Vernon plant is typically a Southern California plant. It has a restricted area. It serves an area down to the border, down to Mexico, and occasionally goes into Mexico, back into about the midpoint of Arizona and a point midway between Los Angeles and San Francisco.

Q. Now, going to the San Francisco area, what plants are located there?

A. San Francisco has the South San Francisco plant, which is on the peninsula south of San Francisco on the west side of the bay.

They employ approximately 750 men, and it is again a plate plant and manufactures many of the same types of plate work that the Maywood plant and the Vernon plant do, except that they manufacture more penstock work and very large diameter pipe than do the other two plants.

Q. Are there any limitations on the area that plant serves?

A. Yes. That plant serves the Pacific Coast up to the Canadian border, and it again serves down into the middle of the State of California over into Nevada and occasionally into Utah, Idaho, and Oregon.

Q. How about the Berkeley plant?

A. The Berkeley plant is located in Berkeley in the East Bay area. It is a small plant employing about 171 people and manufactures the smaller type of pressure vessels, butane 224-541 or propane holders for commercial use, for household use, some larger ones, but not much larger than the household ones, and manufactures four inch to eight inch light wall pipe; that is, when I say light wall I mean 10 gauge to 12 gauge in thickness for irrigation purposes.

Q. Does that serve any particular area, that plant?

A. That serves principally the area around Oakland, Berkeley, Richmond and perhaps halfway from, half the distance between Berkeley and Fresno.

Q. You have a plant at Fresno, have you not?

A. Yes, sir.

Q. How large is that plant?

A. That is a small plant employing about 150 people, and manufactures water well casing, corrugated culverts, small plate products such as wine tanks, specialties for the industry around the area of Fresno, and miscellaneous plate products of any kind we can find to manufacture.

Q. Does it serve particularly the area surrounding Fresno?

A. It is a local operation. It serves Fresno and environment. It has considerable to do with the farming community because it builds hard red water well casing.

Q. I neglected to ask you whether the Berkeley plant or the Fresno plant have any facilities for the production of fabricated structural products.

224-542 A. No, sir; they don't.

Q. Do you have a so-called plant at Taft, California?

A. So-called plant.

Q. Describe that briefly.

A. It is a plant, simply a very small operation, principally for field purposes.

It employs about 45 men, and it was built back in about 1906 or 1907. It is a very decrepit plant. It has a very few tools in it

and, as we said, operates from a field standpoint only. If there is a correction to be made for materials that are shipped out in that area, the materials are pulled in there and the work is done; also if there is an emergency job, a quick job to be done, by the use of small tools in that plant for the oil industry, that plant will do it.

Q. Does it generally fabricate any structural or plate products itself?

A. It does some small light-gauge plate work, and occasionally will punch some angles for use in the construction of a small cotton gin building. That, however, has been discontinued and the work is being put down into the structural plant at the Maywood plant.

Q. How about your Phoenix, Arizona, plant?

A. Phoenix, Arizona, is a very small plant employing about 75 people and manufacturing water well casing, corrugated culverts, miscellaneous light work, some small pressure vessels and if called upon, will do some field work of any kind required in connection with their type of activity.

Q. Has it the facilities for the fabrication of heavy structural products?

A. No, sir.

Q. Now, your remaining plant is at Orange, Texas, is it not?

A. Yes, sir.

Q. Will you describe that also, please?

A. The Orange plant is merely a structural plant. It was, as has been introduced into some testimony, called the Orange Steel & Car before we purchased it for about \$63,000 in 1940.

During the war period it operated alongside of our destroyer yard there and fabricated principally war requirements on structural steel. Presently it is a structural steel plant rehabilitated to considerable extent with new tools or good secondhand tools that we have been able to find, and is serving the area around Orange, of course, and western Louisiana and most of the state of Texas.

Q. As president of Consolidated and with your past experience with the company, have you become familiar with the extent and the type of competition that is met on the sale of Consolidated products?

224-544 A. Yes, sir.

Q. Is that competition extensive, and if so, would you describe generally what it is and where it comes from?

A. Our competition is very extensive. Taking the structural business first, California seems to be a place where everybody wants to live and everybody wants to open up some kind of a shop. That is a fact and there are literally hundreds of shops around the southern California area. That was pointed out very clearly

in the Small War Plants approach. I happened to be a member of that organization during the war. In trying to benefit the small war plants, they asked me to serve in that capacity. I became intimately familiar with the extent of those plants throughout the area.

Many of them don't and can't fabricate the medium size or heavier type of work that Consolidated can, but they do compete with us on the smaller products that we do aggressively go after for the maintenance of a load in our plant.

Now, I can't remember the names of the hundreds that I referred to, but the competition in the structural business is made up of people like the National Iron Work at San Diego, Pacific Iron and Steel at Los Angeles, Kyle Steel Company in Los Angeles, Union Steel Company, recently formed and recently built—that is not recently formed—it has been formed for some 224—545 six or seven years, but they have recently completed the construction of a new plant. There is a concern in Bakersville that competes with us.

We feel that competition during hard times of such Eastern concerns as Ingall's Iron Work, Bethlehem Fabricators, not meaning the Bethlehem Steel Company, Belmont Iron Work, and the Minneapolis-Moline Power & Implement Company. They have all been into our territory. It seems to be a very desirable place to come and compete with us on our work.

That generally covers the structural competition. I could name some others, but it would take some time.

Q. Does that cover the type of medium and heavy structural fabrication that Consolidated is capable of doing, these last plants that you named?

A. Yes. Pacific Iron & Steel and now the Union Steel Company again, and I haven't mentioned the most important and the most aggressive structural competitor that we have there, the Bethlehem Steel Company, Pacific Coast Bethlehem Steel Company, it being a subsidiary of the Bethlehem Steel Corporation.

Q. To what extent is Consolidated engaged in pipe fabrication?

A. Fabrication of pipe of the Consolidated amounts to, first, the pipe that we make at the Berkeley, California, plant. That is the 4-inch to 8-inch, 10- to 12-gauge, for irrigation purposes.

224—546 Q. What kind of pipe is that?

A. It is made out of coil. It is produced on what we call a lobley mill, which is progressively formed into a circular section and as it goes through the last pass it is continuous resistant welded. It is a rough operation because there is no precision necessary in the type of product that it is. It is to furnish pipe

for irrigation purposes, a pipe of low pressure, not accurate in its contour, and is not threaded and coupled as is larger standard pipe manufactured by other companies. It is purely a local operation.

224-547 Then we manufacture pipe at the South San Francisco plant, at the Vernon plant, and at the Maywood plant.

Now, the description—if you want an intimate description, an accurate description of all the operations it will take me a little time to get into the detail, because some of the operations are different.

Q. Well, generally, is all of the pipe welded pipe?

A. All of the pipe that we make is electric-welded pipe with the exception of that four- to eight-inch pipe that I just mentioned.

Q. Yes.

A. Is electric-welded pipe by the union-melt process, using a Lindee rod and flux, bare rod and flux, and it is welded under a submerged arc. In other words, the flux covers the arc.

Q. Just describe as briefly as you can but reasonably fully the different kinds of pipe that you manufacture by that method.

By Mr. MILLER:

Q. Is that the fusion method?

A. That is the fusion method as contrasted to the Berkeley. Berkeley is a resistance-welded operation.

Q. Yes. Excuse me for interrupting.

A. Now, the method by which we make pipe limits the diameter and thickness of the pipe. We have to roll our pipes into a cylinder and then weld the joint to make pipe.

224-548 Now, at the South San Francisco plant we engage there in large-diameter pipe, and the heaviest pipe in commercial lengths of 30 feet, which is the length that the trade wants for laying in the field, because they want as few field joints as they can get.

The smallest diameter that we can make there in that length is 18 inches with a  $\frac{1}{8}$ -inch wall. Now, if we lower the diameter we have to lower the wall thickness. If we increase the diameter of the pipe we can increase the wall thickness.

The pipe is formed by putting it through what we call pyramid rolls and the top roll is the forming roll and the diameter of the top roll is the factor that controls the diameter of the pipe—the combination of the diameter of that roll and its proximity to the two smaller supporting rolls underneath.

Now, we make pipe principally for the water industry there during normal times from that diameter on up. At the present time we are doing a job for East Bay Municipal, East Bay Utilities

of, as I recall the diameter, 62 inches in diameter, and that is the type of business, that is the type of work that fits the South San Francisco plant.

We are also making pipe of small diameter there as a truly emergency measure.

The larger the diameter of pipe and the thicker the wall, of course, the lower the price per ton and the more competitive Consolidated becomes.

224—549 At the Vernon plant we have a similar type of work.

It might be of interest to note that at the Vernon plant you will find some of the welding heads that come from the Christy Park plant which Mr. McCannor stated was scrap. Those were purchased by Western Pipe & Steel before we owned Western Pipe & Steel, and they use those welding heads for welding pipe. They make the same type of product there, using the same method of welding.

Now, at the Maywood plant we have recently taken on the fabrication of these oil lines for Trans-Arabian, and our method of manufacturing as far as the welding is concerned is the same in connection with rod and flux, and we are using so-called Berkeley machines for forming machines, but we expand that pipe, cold work it to increase the yield point from 33,000 pounds to 52,000 pounds yield point, therefore making a pipe of a thinner wall, and we are using a steel of high manganese content in order to achieve that.

That is the only difference in the operations of the various plants in making pipe.

By Mr. ALERED WRIGHT:

Q. By the way, in connection with that Trans-Arabian pipe line you had nothing to do with the construction of the pipe line?

A. No, sir.

Q. You manufacture the pipe and deliver it at the  
224—550 Maywood plant?

A. That is right.

Q. During the period from 1937 to 1946, the period that we have been discussing in this suit, have you at any time competed with National Tube Company or Oil Well Supply Company in the sale of any of your products? By "you" I mean Consolidated.

A. No, sir.

Mr. WRIGHT. If the Court please, I think it would be better to have him say just what he did in connection with the sale of products that are similar to theirs, and I suppose your Honor can draw the conclusion as to whether or not that activity constituted competition or not. What he is doing here is drawing the conclusion.

The COURT. That would apply to some actions, but on some actions he could state whether he competed. Is that a conclusion?

Mr. WRIGHT. It seems to me the general question as to whether he competed with any particular company, I suppose, calls for a conclusion based upon a consideration of exactly what the nature and the extent of the sales activities of the companies in question was in the particular field.

The COURT. Wouldn't it be just as easy for you to meet Mr. Wright's objection?

Mr. ALFRED WRIGHT. Yes. I don't want to take the time to do it, but it seems to me this witness is very well 224—551 qualified to know what competition is and whether he has met it or not.

By Mr. ALFRED WRIGHT:

Q. In the sale of any of your products, your pipe products, are you able to supply pipe competitively with either National Tube Company or Oil Well Supply Company for any of the purposes that their pipe is used for?

A. No, sir; we do not compete with National Tube Company.

Mr. WRIGHT. We ought to know what he means when he said "Are you able to supply pipe competitively?" I take it the question assumes he is able to supply pipe of the same general character. Now, before he said he can't do it competitively I suppose we ought to know what these factors are, if any, would prevent him from delivering or taking this business in a manner which might or might not be that to be competitive with National Tube Company or somebody else.

The COURT. Is the particular word "competition" that you object to?

Mr. WRIGHT. Yes, precisely. The insertion of the word "competitively." He is perfectly free to say what he did and what National Tube did, but the conclusion as to whether or not what was done indicated presence or absence of competition I suppose is one that the Court has to ultimately draw in the case from all of the evidence before it.

Mr. ALFRED WRIGHT. May I be heard, Your Honor?  
224—552 The COURT. Yes, indeed.

Mr. ALFRED WRIGHT. Here is a man who has been vice president in charge of sales of the corporation for many years and now its president. He knows what its competition is. He now is asked whether he sells pipe in competition with certain other products. I can't conceive of anybody who would be better qualified to state what competition he has met. If we go back to the basic meaning of the word "competition" and start him from

the bottom up, it can be done, but it will take much longer to do it.

The COURT. I can see that the fact of competition is the ultimate burden that is going to be placed on me. I can appreciate that. But, on the other hand, Mr. Wright, I can't quite see why you can't ask this witness, and take the time, if the pipe that they make has any resemblance to any pipe that these other people make.

Mr. WRIGHT. I can assure your Honor the time will be taken by us if not by him to determine exactly what they do sell.

The COURT. Of course, you will have to take the time to develop your case in some manner. It is only a question of which way and in which manner.

Mr. ALFRED WRIGHT. I withdraw the question.

The COURT. As closely as you can, then, we will try to meet Mr. Wright's objection. /

Mr. ALFRED WRIGHT. Yes.

224—553

By Mr. ALFRED WRIGHT:

Q. Are the purposes for which the pipe sold by National Tube Company or Oil Well Supply Company capable of being served by any of the pipe manufactured by Western Pipe & Steel Company?

A. Yes, sir.

Q. In what respect?

A. As an example of that, the type of pipe that we are making now for the Trans-Arabian Pipe Line Company, they can make pipe or they do make pipe—I will correct my testimony. I mean the El-Paso Natural Gas Company, 26-inch pipe. They are making pipe for that line and for the transmission of gas.

Q. Do you know the cost of the pipe that is being sold by them for that line?

A. I know the approximate price of it.

Q. Do you know the price of the pipe that you are selling for that pipe line?

A. Yes, sir.

Q. What is the difference between the price of the two pipe?

A. Well, there is a difference in price per ton of approximately \$30 a ton.

Q. Which way? Is your pipe the more expensive?

A. Our pipe is the more expensive.

Q. Why is it that you are able to sell your pipe for that purpose at \$30 per ton higher in price than is being paid for the other pipe?

A. The only reason for that is that there is no pipe available. The plates that we use for making pipe come from

Geneva and there were some plates available for rolling pipe, and having exhausted the market the El Paso Natural Gas turned to us to make some pipe as an emergency for them, and that is what we are doing.

Q. You mean they exhausted the market for the kind of pipe they were able to purchase from National Tube Company?

A. National Tube Company or A. O. Smith at Milwaukee or any other pipe fabricator.

Q. So the only reason why you were able to sell your pipe of the diameters that you have mentioned in competition with the pipe to customers who would otherwise pipe of National Tube Company is that there is none of their pipe available for purchase at the present time?

A. That is correct.

Q. And are you able to sell your pipe to customers for those uses when their pipe is available?

A. We are not competitively, sir.

Q. Did you hear Mr. McConnor's testimony yesterday?

A. Yes, sir.

Q. You heard him describe four different kinds of pipe manufactured by National Tube Company and marketed either by that company or Oil Well Supply Company?

224-555 A. Yes, sir.

Q. Do you manufacture or sell any of those types of pipe?

A. No, sir; we do not.

Q. Now, Mr. Roach, Consolidated has engaged in the ship-building business in the past, has it not?

A. Yes, sir.

Q. During what period?

A. From the inception of the National Defense period through the war and it ceased its operations afterward.

Q. From 1940 to 1945?

A. That is right.

Q. Are you engaged in that business any longer?

A. No, sir.

Q. Have you any facilities for carrying on that business?

A. No, sir. We did have the Newport yard, and the title may have been transferred by now. We sold it last month. Whether that title has been transferred as yet I don't know, but we have sold the yard. It was a small boat yard at Newport, California.

Q. You are no longer carrying on any activities there?

A. No, sir.

Q. Who commenced the negotiations with United States Steel Corporation for the sale of the assets of Consolidated to Columbia?

A. I did.

Q. What were the circumstances that caused you to initiate those negotiations?

224-556 A. Toward the latter part of the war the financial position of Consolidated had become so entirely different than our experience had been prior to the war, and I refer to the period from the end of 1929 or the early part of 1930 to about 1937. Our experience was not very good during that period.

It was my opinion that it would be to the benefit of our shareholders if we were to sell our company, sell the facilities, the physical assets, or sell the company and dispose of it and realize the equity that had been built up for these shareholders rather than risk that equity as capital in a more or less uncertain future, and if at once I could do that and make a transaction with a strong company with good management I could do a job for the employees in continued employment and assurance of continued employment and also a community job that would be beneficial.

Q. What did you do in order to try to effect that sale?

A. I approached Mr. Fairless with the idea as being a constructive one.

MR. MILLER. I didn't hear the answer.

A. (Continuing.) I approached Mr. Fairless and indicated to him what I would like to do.

Q. Did he indicate to you that he was interested at that time?

A. My first approach to him was in September 1945, and he gave no comment one way or another. He listened to  
224-557 my story and we continued to talk about other matters, and there was no further discussion of it at that meeting.

Q. Did you next discuss it with him or with somebody else?

A. I next discussed the matter with him.

Q. When was that?

A. That was in the latter part of February or the early part of March 1946.

Q. What did you say to him at that time?

A. I reiterated my statement to him, my suggestion, and I assume you want his answer to me?

Q. Yes?

A. His answer to me at that time was it was an interesting matter, but at the present time they were considering the Geneva plant disposal and possibly bidding on it and that it was a matter he would not discuss with me further until that Geneva matter was consummated one way or the other.

Q. Did you have any further conversations with Mr. Fairless on the subject?

A. Yes. After the acquisition of the Geneva plant Mr. Fairless called me on the telephone and we discussed the matter quite at length and, I think, several times to the end that finally there was a committee appointed to investigate our properties. That committee has been referred to in previous testimony.

Q. You heard the testimony in that regard?

224-558 A. Yes, sir.

Q. Was it substantially accurate according to your understanding?

A. It was.

Mr. ALFRED WRIGHT. You may cross-examine.

Cross-examination by Mr. WRIGHT:

Q. Mr. Roach, you say that you have now sold the shipyard that you formerly operated—that is, the yard at Newport?

A. We have negotiated the sale, sir.

Q. When was that negotiated?

A. About a month ago.

Q. And to whom was that sold?

A. It was sold to a group of real estate developers in the Newport-Balboa area.

Q. It was not sold as a shipyard business?

A. We were not interested how it was sold. We took bids. We took bids on the yard and the low bidder got the yard.

By the COURT:

Q. The low bidder?

A. The high bidder. I beg your pardon.

By Mr. WRIGHT:

Q. In any event, the high bidder does not propose to build ships with it; is that right?

224-559 A. I know nothing of his intentions, Mr. Wright.

Q. You don't know what they intend to do with it?

A. No.

Q. This conversation you said you had with Mr. Fairless in September 1945, was that the first time you had ever talked to anybody in the Steel Corporation about possible acquisition of your plant?

A. No, I had spoken to Mr. — in some years past I had spoken to Mr. Ross, former president of Columbia Steel Company, now deceased.

Q. When was that?

A. I couldn't tell you the time. It is a good many years ago.

Q. How many years ago? Three, five, ten?

A. I just couldn't answer that, Mr. Wright. I don't remember.

Q. You don't remember whether it was —

A. It was a long time ago.

Q. Was it before the war?

A. Yes, sir.

Q. That was in connection with an approach made by him or by you? Do you recall?

A. An approach made by me.

Q. Then there was nothing between that time and this conversation you had with Mr. Fairless in September 1945?

224-560 A. No, sir.

Q. Did you have any knowledge at the time you went into these negotiations as to what if anything had been done by the corporation with reference to constructing fabricating facilities out in your area?

A. No, sir; no knowledge whatsoever.

Q. You had not learned prior to that time of this survey or these surveys that had been made on behalf of American Bridge Company looking toward the location of a plant or plants in California?

A. Not a bit.

Q. Now, the next time after 1945 there was no further conversation with Mr. Fairless about your sale, you say, until February or March 1946?

A. That is correct, sir.

224-561 Q. What was the occasion for approaching him again at that time?

A. In the hopes that I could convince him that it was as constructive a proposition as I thought it was.

Q. I take it, then, in the September conversation of 1945 there wasn't an actual turn-down? You were left with the impression that he was receptive, were you?

A. There was no actual turn-down.

Q. I just wondered why it was or how it was that you happened to renew the matter in February or March of 1946, rather than some prior time between September and that date.

A. Is that a question?

Q. Yes.

A. Well, Mr. Fairless was on the coast at that time, either on a vacation or an inspection trip, I don't know which, and I took the opportunity to visit with him and again discussed the matter.

Q. And then that was the time in which he told you that he could not give you an answer until after he found out what he could do about acquiring Geneva?

A. He gave me the answer.

Mr. ALFRED WRIGHT. If the Court please, that is not what the witness said Mr. Fairless said about what he could do about acquiring Geneva. What he was saying was he was going to

224—562 await the eventuality of what happened to the Geneva plant. Counsel is obviously trying to put a different interpretation on the question, and I think it is an unfair one.

Q. Do you remember what his precise words were, Mr. Roach?

A. My answer to the question is in the record.

Q. I said, do you remember now what the precise words that he used actually were?

A. That would be impossible for me to do, I think.

Q. Well, in any event, he left you with the impression, did he not, that he would give you the answer on the deal after he found out whether or not he was going to be able to buy Geneva; is that right?

Mr. ALFRED WRIGHT. Just a moment. If the Court please, there is no question about Mr. Fairless' ability to buy Geneva. This is an unfair inference that is being put into the question.

What the witness said was—and I would like to have it read if there is any question about it—that he would await the eventuality as to what happened to the Geneva plant; not whether he could buy it and not whether he would be able to get word of it, which is the implication counsel is trying to put into the question.

Mr. WRIGHT. I think the question is a fair one on cross-examination.

224—563 The COURT. The only difficulty I have about it are the words "was able to buy." Perhaps you could make your question, until the result of the Geneva transaction was settled.

Mr. WRIGHT. Would you read the question?

(The reporter read the previous question as follows:)

"Question. Well, in any event, he left you with the impression, did he not, that he would give you the answer on the deal after he found out whether or not he was going to be able to buy Geneva; is that right?"

Mr. WRIGHT. I see nothing wrong with the question as worded as proper cross-examination. I take it he can answer it yes or no. I am asking him what his impression was. If that wasn't his impression, he can say no.

The COURT. The witness on the stand, from the objection to the question, that there is objection to the phrasing of the question. I see no particular objection to the question that he was able to acquire it. That doesn't quite have the signification it has to you.

Mr. ALFRED WRIGHT. The testimony up to this time has certainly not been that Mr. Fairless was attempting to get the Geneva plant, and what the witness said and the question about which counsel is now examining have nothing to do with any ability of Mr. Fairless to get the plant or an effort to get it.

As a matter of fact, my recollection of the testimony is that at that time there was no deal, no deal considered, and I just don't want that implication put into the question. Surely the witness can answer the other way.

The COURT. If the witness understands it, and there is no jury to be mislead, I think we might go on. Do you understand the question, Mr. Roach?

The WITNESS. Read the question, please.

(The reporter reread the question as follows:)

"Question. Well, in any event, he left you with the impression, did he not, that he would give you the answer on the deal after he found out whether or not he was going to be able to buy Geneva; is that right?"

A. That, in my opinion, Your Honor, if I may express an opinion—

The COURT. Excuse me. If you will answer the question and then we will let in any explanation you want, after you have answered the question categorically:

The WITNESS. The answer to that question is no.

The COURT. Now, you may make any explanation you want to.

By Mr. WRIGHT:

Q. Go ahead.

A. If you will read my answer to the former question—  
224—565 · tion you will see that I didn't say that he was engaged in negotiating the Geneva plant. I said he was considering it and I think he was only considering the matter at that time, therefore, he couldn't give me any such statement as that.

The COURT. As to whether he was able to buy it?

The WITNESS. That is correct.

Q. I take it as to what he was considering is something he would be more competent to tell us about than you in any event; is that right?

Mr. MILLER. He will tell you.

Q. Correct?

A. I assume that is correct.

Q. And what we are trying to find out from you is simply what the effect of what he had to say was on you or what you thought the state of the deal was at the time he got through saying to you whatever he had to say, and that is what I would like to find out. Was it or was it not your understanding, as you left him, that purchase of Consolidated would be contingent upon his acquisition of Geneva?

The COURT. Do you understand the question?

A. State your question again, will you?

Mr. WRIGHT. Will you read the question?

(The reporter read the last question.)

A. No. The only situation, the only thing that changed there was at this point he had indicated an interest in the discussion and that, to me, was hopeful.

Q. Did he indicate to you the basis for the change?

A. The basis for the change of what?

Q. The basis for his having an interest in March 1946, or a greater interest than he had in September, 1945.

A. No. The net of it is that Mr. Fairless chose not to discuss the matter with me in any detail.

Q. Then there was nothing he said to you at the February or March 1946, conference which indicated any more interest on his part than was indicated at the September 1945, conference; is that correct?

A. Only to the extent that I have testified.

Q. That is what I am trying to find out as precisely the extent of whatever he said at the 1946 conversation that was different from what he had said in 1945. As I understand your testimony, in 1945, then, nothing was said about Geneva one way or the other; is that right?

A. That is correct.

Q. And in the February or March, 1946, conversation he did tell you something about his plans for Geneva; is that correct?

A. He told me only what I testified there; that he was considering the Geneva proposition and that until such a thing were consummated one way or another he wasn't interested in discussing the matter with me. I think that reiterates my testimony, your Honor, and I know nothing more to say on the subject.

Q. That is all you can tell at this time about the substance of either of those conversations, what you have so far testified to?

A. Yes, sir.

Q. The next one, you say, was a telephone call?

A. Yes, sir.

Q. When was that?

A. That was shortly after the acquisition of the Geneva plant.

Q. How long after?

A. The exact date I don't remember, but as I recall it, I think it was the latter part of—either the latter part of June or the first part of July.

Q. Do you remember when the Geneva bid was accepted?

A. I don't recall.

Q. But this was a short time afterward. You do remember that?

A. Yes.

Mr. MILLER. The Attorney General's opinion is dated June 17.

Q. Does that help you as to fixing this date?

A. Date of what?

Q. This telephone conversation.

224-568 A. I could not tell you the exact date of the telephone conversation to save my life. I said it was shortly after the consummation of the Geneva plant, the latter part of June or the early part of July.

Q. That was a call put through by Mr. Fairless to you?

A. Yes, sir.

Q. What was the substance of that conversation?

A. That he would like to sit down and further discuss this subject that I had broached with him.

Q. And from that point on the negotiations were turned over to this committee?

A. There was a committee of inspection formed that came out to examine our facilities and our general over-all picture, and then there was a negotiating committee formed, which I explained.

Q. That was what I wasn't clear about. When was the next actual negotiation following the telephone call?

A. Well, the inspection committee came out August 12 and stayed out there in that vicinity until August 25, and the next meeting on the subject after the departure of the inspection committee was in October in Mr. Fairless' office.

Q. That is October of 1946?

A. Right.

Q. Do you remember the substance of that conversation?

224-569 A. Yes. That conversation started the negotiations. Mr. Fairless indicated that he was interested in examining the possibilities of consummating a transaction between the two companies.

Q. This was, I take it, after the inspection committee had been out there and assembled the data?

A. That is right.

Q. Was that all that was said at this October meeting?

A. No. There was a discussion of the general corporate affairs; there was a discussion of some of the activities, rather, the financial affairs and the corporate structure of the company; a discussion of the activity of the inspection committee and some tentative ideas of what proper form the transaction should take, an exchange of ideas as to approximate values with no conclusions; adjourned for further consideration.

Q. Then the next negotiation was when?

A. The next negotiation was in December in Pittsburgh.

Q. That was when in December? Do you remember?

A. That was about December 7 or 8 or 9, somewhere in there.

Q. You and Mr. Fairless were both present there together with the others on this committee?

A. Mr. Fairless wasn't present at the negotiation. He introduced us to the negotiating committee and withdrew.

224-570 Q. This was at the December meeting?

A. Yes.

Q. This is the December 1946 meeting?

A. Yes; that is right.

Q. That was the meeting in which you concluded the negotiations which determined the fact that you would sell and the price?

A. In principle we settled it there.

Q. And then the agreement was finally reduced to the December 14th agreement in evidence here?

A. That is right.

Mr. WRIGHT. I think this is as good a place to adjourn as any, your Honor.

The COURT. You haven't finished?

Mr. WRIGHT. No. I don't think we can finish before lunch anyway.

The COURT. We will recess until 2:15.

(At this point recess was taken until two-fifteen o'clock p. m., the same day.)

224-571 Two-fifteen o'clock p. m., the same day.

Present: As before noted.

ALDEN G. ROACH (resumed).

Cross-examination (continued) by Mr. WRIGHT:

Q. Mr. Roach, as I understood your direct testimony as to why you decided in the fall of 1945 there to interest the Steel Corporation in purchasing your company, the reason was that you then had serious doubt as to the ability of the company to operate profitably in the postwar period?

A. I didn't know that to be a fact at all. It was impossible to determine at that point. The facts are, as I have stated, that the values that were built up in the company during the National Defense period and the war were such that it seemed to be far better for the stockholders to turn that equity loose to them rather than take that equity which they might or might not receive in the future and risk it in a rather uncertain future.

Q. These values that you are referring to were earned surplus that had been built up through the execution of these

224—572 war shipbuilding contracts?

A. Yes.

Q. And what you are talking about was the opportunity presented to realize on those values by a sale of the business; is that right?

A. That is right.

Q. Your fear was that if you did not liquidate the business then the earned surplus might be lost through unprofitable operations in the postwar period?

A. That was a consideration.

Q. When was it that you first came to the conclusion that you ought not to hazard this earned surplus by continued operations in the postwar period?

A. As these values increased I progressively made up my own mind that if such a transaction could take place it was just about as good a job or would be about as good a job for our stockholders as I could do to turn those earnings over to them.

Q. Yes. I am trying to get at the time when you first reached the conclusion to the effect that you thought you ought to get out.

A. Well, obviously the time was prior to the first discussion with Mr. Fairless, but it was a progressive thing as far as I was concerned.

Q. Just built up gradually over the years?

A. Well, I gave it serious consideration—very serious.

224—573 consideration during the last year of the war.

Q. That is throughout 1945?

A. Yes.

Q. When you were considering it then did you consider any other possibilities of realizing on these values other than by a sale to the United States Steel Corporation?

A. Yes, I did.

Q. What other possibilities did you consider?

A. I considered the possibility of selling the company to Bethlehem Steel Company.

224—574 Q. Did you have any negotiations with Bethlehem?

A. I had some preliminary ones that we quickly concluded.

Q. When were those negotiations?

A. Sometime during the year.

Q. The year 1945?

A. As I recall it.

Q. You don't remember when?

A. No.

Q. Do you know whether it was before or after you had that first talk with Mr. Fairless in October 1945?

A. It was before.

Q. It was before that?

A. Yes.

Q. Then did you have any negotiations with anybody else relative to the sale of your business?

A. No, sir.

Q. How about with reference to a sale of a part of the business or some of the stock?

A. No, sir.

Q. You had no negotiations. Did you ever discuss that possibility with anyone?

A. What possibility, Mr. Wright?

Q. Well, I called your attention specifically to suggestions made by people representing the Kaiser Company 224-575 for the purchase of a stock interest in your company or some sort of affiliation between you and that company. Do you recall any such approach?

A. I remember a conversation—well, in the first place, before the war, and it wasn't negotiated with me—there was a conversation by a representative of Republic Steel Company in this connection. It never grew to serious proportions, as far as I knew, and nothing ever came of it.

Q. I am referring specifically to the Kaiser Company.

A. The Kaiser Company, Mr. Kaiser approached me a number of times as to joint ventures with him on projects. The first time he called upon me with several of his cohorts was about the time that we had unsuccessfully concluded negotiations on the purchase of the L. A. Shipbuilding facilities in Los Angeles.

Q. When was that?

A. That was in 1943 or 1944, during the war.

Q. Yes.

A. And suggested that he had a steel plant and that we had a fabricating plant and that he thought a good business to go into would be railroad-car business, and that he would furnish the steel and that we had a fine engineering organization that could furnish that end of the business, and if it wasn't sufficient he could help us and furnish the rest of it, and that he would show us how to sell railroad cars.

224-576 He told me that the railroads needed hundreds and hundreds and thousands of cars, and he purported to advise how that could be done and that we should work together on the project.

I said that I thought that as far as we are concerned we had no interest in going into a joint venture of that nature. We would be glad to fabricate any parts of the cars that he was able to sell to the railroads.

He suggested that the RFC be approached and that some kind of a railroad trust fund be set up, some fund be set up, that would be available to the railroads to go in and buy thousands of cars, they needed them so badly, and he thought that problem could be worked out. I said I wasn't interested.

224-577 Q. Was there any discussion with you and Mr. Kaiser or between you and representatives of the Kaiser Company—

A. I didn't finish my statement.

Q. Oh, I am sorry.

A. I would like to finish it. He went further and he said he had heard about this L. A. Ship thing and he said, "Now, Mr. Roach"—rather "Alden"—he called me by my first name—"We ought to work some of these problems out together." He said, "Let us go down today and buy that L. A. Shipbuilding Company."

My answer to that was, "No, Mr. Kaiser. If we do that we will do that on our own. We are not interested."

That seemed to conclude the meeting as far as I was concerned.

Q. That is all you wanted to say on that subject?

A. That is right.

Q. What I asked you about specifically and what I am now asking you about is whether or not you had any negotiations with Mr. Kaiser or other representatives of the Kaiser Company looking toward some kind of affiliation by stock affiliation or otherwise between your company and his which would make your company a more stable or assured market for his rolled steel?

A. Mr. Kaiser himself never approached me on that subject at all, but I received a message one day that a certain individual—I will name him—a Mr. Eberstat would like to see me and generally discuss the Kaiser Fontana Mill situation.

224-578 Q. This was about when? Can you tell us?

A. This was about three years ago. And because I was approached by somebody that I knew very well and it was a request that I go to New York and listen to this inquiry I did and had lunch with Mr. Eberstat in my apartment at the hotel, and his primary reason for wishing to see me was to find out what I knew about the Fontana Mill, whether I thought it would be a successful operation or whether I didn't.

Q. Just confine yourself to what was said as nearly as you can or the substance of what was said and then we will figure out the reasons from that. What was the subject of what he had to say and what you had to say?

A. Well, that is the substance of what he had to say. He was trying to find out what I thought about the operation of the Fontana Mill, and I said—

Q. Go ahead.

A. My answer to him was that I wasn't familiar with the details of the operation of the mill and was not in a position to give him any long-range forecast.

Q. Did you ever at any time have any discussion with any representatives of the Kaiser Company which explored the possibility of some affiliation between you by stock holding or otherwise which would make you a more assured market for his rolled steel products than you had then?

A. No, sir.

224-579 Q. You say there was no discussion at any time with his representatives or with him about the possibility that the Steel Corporation might acquire your facilities?

A. Well, he has asked me that question whether or not I was affiliated.

Q. When was that?

A. Three years ago.

Q. What was it that was said?

A. He asked me the question—that was just prior to his visit to me suggesting this car business and buying the L. A. Shipyard, and he called on the telephone one night at my home and asked me those questions, whether I was affiliated with either Bethlehem or the Steel Corporation, and my answer was no.

Q. You have told us, then, all of the negotiations that you had with him concerning this matter I asked you about?

A. Yes.

Q. What were the factors entered into your decision that it was going to be hazardous for you to continue to operate in the post-war market out there?

A. I did not conclude that it was going to be hazardous.

Q. Well, I understood you to say in your previous testimony you decided in 1945 that it was a good time to sell out there because you thought if you kept in business you might lose this earned surplus you had built-up; is that correct?

A. That is correct.

224-580 Q. Well, what were the factors in the situation which led you to believe that you might lose the surplus if you continued to operate?

A. Well, the main factor was our experience during the period between the end of 1929 and beginning of 1930 up to approximately the beginning of the National Defense period. Our financial experience during that time primarily because of the depression that we went through was a very difficult one for us—so difficult that we after 1930, the early part of 1930, paid no common dividends whatsoever and got so desperate in 1934 and 1935

that we asked for a moratorium on payment of any dividends on our preferred stock, and we discontinued those, and it was not until 1936 or 1937 until the tide started to change a little bit that our picture got out of the situation that it was in during those years; and with that history of the financial vicissitudes of the business during that period I could not help but not desire to go through another one of those.

224-581 Q. Well, were there any vicissitudes or hazards besides those attendant upon any general fluctuation in business conditions that led you to this conclusion that you would be risking these resources if you continued to operate?

A. That was the consideration that I gave. That is the reason I decided to do it.

Q. I say, were there any other factors entering into the matter than your general knowledge as to the fact that business conditions, general business conditions, had fluctuated widely in the past and would probably continue to fluctuate widely in the future?

A. No; I gave no weight to any other consideration except the one that I mentioned.

Q. Now, you were not particularly concerned then at that time about your supplies of plain materials, your rolled steel supplies?

A. Concerned with them?

Q. Concerned about the fact that you might or might not be able to procure in the future adequate supplies of rolled steel at prices which would make you competitive?

A. We were not concerned at all because our requirements were very little, almost nothing.

Q. And as to the price of the steel, that was a matter that had never concerned you particularly?

224-582 A. Price of steel?

Q. Yes; the price of the steel you bought.

A. It always concerned us.

Q. You yourself had expressed the opinion, had you not, that you and the other West Coast fabricators out there had been discriminated against in the prices for rolled steel that you had to pay; isn't that right?

A. That is correct. I would like to amplify my answer.

Q. I was just about to ask you to tell us what the nature of the price discrimination was.

A. Am I free to answer?

Q. Yes.

A. The reference that you make is contained in a statement made by me before the Pacific Coast Freight Conference in San Francisco, in which I made the statement that I knew what price discrimination is.

I didn't infer by that statement, or mean by that statement, that it was price discrimination as from the steel industry against us in favor of some other customer. That wasn't the intent. The intent of the statement was to say that we felt that the steel industry, in general—and at the same time we knew nothing of the steel industry's costs, their freight handicaps, mill cost handicaps or anything else—that we felt that we were entitled to a better price of steel for steel that was rolled in mills located 224—583 on the Pacific Coast as against steel procured from the East in mills, steel rolled in Eastern mills.

Q. Well, to be more specific, a particular source of discrimination, or alleged discrimination insofar as you were concerned, was the fact, was it not, that you had to pay for the rolled steel that you got from California rolling mills a price that was greater than the Eastern base prices by an amount approximately equal to the freight from the Eastern basing points to California; is that correct?

A. We paid a price, of course—

Q. First can you answer the question yes or no?

A. For our steel—

Mr. WRIGHT. Would you read the question again? Let us see if we can get an answer.

Mr. ALFRED WRIGHT. If the court please, will you please direct counsel to allow the witness to answer his question before he interrupts?

The WITNESS. This is a subject that requires a great deal of explanation, and it is very difficult to answer yes or no.

The COURT. If you can. You understand, all we want is the answer insofar as you can give it; then with any amplification, qualification of explanation you want to. There will be no attempt to limit your explanation.

Mr. WRIGHT. Now, will you read the question to 224—584 him and see whether he can give an answer to the question, and if he can't, let him so state?

The COURT. If you can't, just state so.

(Question read by the reporter as follows:)

"Question. Well, to be more specific, a particular source of discrimination, or alleged discrimination, insofar as you were concerned, was the fact, was it not, that you had to pay for the rolled steel that you got from California rolling mills a price that was greater than the Eastern base prices by an amount approximately equal to the freight from the Eastern basing points to California; is that correct?"

A. The only answer I can give to that, your Honor, is that I don't know, because I don't know what the freight absorption or freight charges are between the Eastern base.

Q. Well, you knew, as a matter of fact, that there was a differential in the price of rolled steel as between what you had to pay for it delivered to your plants in California and as to what the Eastern mills paid for it delivered, let us say, in Pittsburgh or in Gary of anywhere from \$10 to \$15 a ton?

A. That is right, somewhere in that neighborhood.

Q. I take it the reason why you thought that that differential was in fact, a discrimination, was because you knew that steel that came into the West Coast area from the Eastern mills could only come in with the payment of a very  
224—585 substantial freight charge, didn't you?

A. Repeat the question, please.

(Reporter read the last question.)

The COURT. Your question doesn't start off as a question, I take it.

Mr. WRIGHT. All right. Strike that out. Let us try again.

Q. Steel was sold to you at the same delivered price, whether or not it was shipped to you from a California mill or from Gary or Pittsburgh, was it not?

A. That is right.

224—586 Q. I take it that your feelings that this differential you previously described was a discrimination was based upon the fact that that differential in price apparently had no apparent basis in the actual cost of making and delivering the steel to you, the respective costs at the California and at the Eastern mills; is that right?

A. That is the basis of our thinking, but I would like to amplify that if I may.

Q. Go right ahead.

A. We have studied this problem. Industry on the West Coast have been working hard for a long time to get what we felt was a more equitable price of steel, particularly the cost price of steel rolled, as I have said, in Western mills. I also said I did not know the committee that studied this thing and those of us of the industry who had discussed it did not know what the cost situations and problems of the various mills were, so we could not say that this mill or that mill or the other mill have cost experiences such that they can afford to do what we want them to do, and so we don't know what the handicaps were. We felt that there was a difference there. We didn't know how much and no approach has been made that I know of to the steel companies to equalize between Pacific Coast prices and Eastern base prices as such—in other words, the breakdown that Mr. Wright describes as a ten or fifteen dollar freight haul and eliminate that entirely; but that was the hope of local industry that the price could be

224-587 changed downward. That is the whole story right there, and I repeat again that we had no knowledge of the costs of the various mills involved.

224-588 Q. Going back to this time October 1945 again, did you at that point have any greater or lesser hope than you had previously entertained as to the possibility of cutting down the amount of this differential?

Mr. ALFRED WRIGHT. If the Court please, I object to the question as being irrelevant and immaterial. I haven't the faintest idea what the purpose of it is.

The COURT. Would you read the question, Mr. Blam?

(The last question was read by the reporter.)

Mr. ALFRED WRIGHT. And I object on the further ground that it is unintelligible.

The COURT. Perhaps the answer to that last objection would be whether the witness understands.

Mr. ALFRED WRIGHT. All right, let the witness tell me whether he understands it.

The COURT. If the witness understands it he can so instruct counsel.

By the COURT:

Q. Do you understand the question?

A. I don't yet. Repeat it, please.

Mr. WRIGHT. Strike the question. We will pass it.

The COURT. Let the question be stricken.

By Mr. WRIGHT:

Q. In any event, this differential or discrimination that you have referred to is one of the factors, is it not, that enters into your ability to compete with Eastern steel makers today and that did enter into it throughout this period of 1937 to date; is that correct?

A. I submit I don't understand your question. You will have to repeat it again.

The COURT. If you can make it a little bit shorter, Mr. Wright, possibly the witness won't lose the thread.

Q. As of now there is still a differential of ten or fifteen dollars a ton on the items of rolled steel that you buy as compared to the same prices paid for the same items by fabricators in Pittsburgh and Gary; is that correct?

A. There has been a change in that price on the Pacific Coast and in part the thing that we have hoped for has been accomplished. At the same time there has been a change upward in transportation costs affecting the Eastern fabricators to our advantage out there, so the situation is not anywhere near as it was before.

Q. The situation is about the same. The change you are referring to in the price differential on the products that you buy arises from the fact that Geneva was made a basing point for those products?

A. Well, we buy from not only Geneva, but we buy from—we receive materials from the Torrence plant, too, and we get materials from Bethlehem Slawson Avenue plant.

Q. Whichever plant you get the materials from you pay the same price; is that right?

A. Not necessarily so. The Kaiser plant is higher than the other plants.

Q. Well, all those three you mentioned?

A. As far as the Torrence plant is concerned and the Geneva plant there is a differential between those plants at the moment of some small amount, and the Bethlehem plant, Slawson Avenue, is approximately the same as the price that we—no, I will reject that. I can't remember what we pay for any structural shapes from the Bethlehem plant at Los Angeles at the moment. I can check that and let you have it.

Q. What is the amount of the differential that now exists on structural shapes? Do you know?

A. What differentials?

Q. The difference between the price that you pay for structural shapes and the price that a fabricator in Pittsburgh or Gary would pay for structural shapes today. Do you know what that amounts to?

A. We pay—from the Geneva plant we would pay \$3.17 a hundredweight, and from the Torrence plant—

Q. That is plus freight?

A. No; that is delivered to our plant.

Q. You pay what?

A. \$3.17.

Q. That is not your actual price for the steel per ton?

224-591 A. That is right. I have the record here if you want to look at it.

Mr. MORRIS. Per hundredweight he said.

Q. Oh, per hundredweight? I misunderstood you.

A. And \$3.14 from the Torrence plant. We pay \$3.40 and three-tenths cents on Eastern rolled shapes shipped from the East.

Q. I think you misunderstood the question. The question I asked you was the amount of the present differential between the price you pay for your structural shapes and the price that the fabricator located at Gary or Pittsburgh pays for his structural shapes.

A. Well, he pays \$2.50 a hundredweight, as I recall, for his structural shapes.

Q. That differential that still exists, which existed to an even greater degree prior to these new prices you have just referred to, is a factor, is it not, which affects your ability to compete in the sale of your products that you turn out?

A. We have always felt on the West Coast—

Q. Can you answer the question first?

A. Yes, there is some effect.

By Mr. ALFRED WRIGHT:

Q. Do you want to explain that answer?

A. Yes, I would like to elaborate on it.

224—592

By Mr. WRIGHT:

Q. Go ahead.

A. There has been some effect making it more possible for such concerns as I have mentioned from the East to compete in that area, but we have always been able to obtain our share of whatever business there is in an area in which there is relatively very little business.

Q. The business you do have has been confined to this 11-state area described in the complaint, which consists of the far West and Southwestern states, isn't that right?

A. No, some isolated instances we have gone afield.

Q. But in general you have not been in the past and you are not today in a position to go into let us say the Middle Western or Southern market and compete with the fabricators in those markets?

A. Yes, we are in the Southern market.

Q. Well, east of the Mississippi?

A. We do not consider that territory in which we can profitably operate.

224—593

Q. And nevertheless the Eastern fabricators today and always have competed in these states where you sold your products?

A. Some of them have.

Q. Well, in any event, the thing that has enabled them to come into your territory and has kept you out of theirs is this price differential in the price of the rolled steel, isn't that right?

A. Depending upon their location they have had fabricated transit privileges that have given them some better competitive position.

Q. The answer to the question is yes, is it?

A. The answer is yes.

Q. Now, this business you described of making heavy welded pipe for oil and gas use, you say, that is a business you just recently have gone into?

A. We have. That is the type of business that I described to you at the Maywood plant which is and for which and from which plant we are furnishing pipe to the El Paso gas line, Southern Counties gas line and Trans-Arabian pipe line, and which is a business that is a type of fabrication that is new to us.

Q. You do have plants located in the principal oil-producing states of the country, don't you? That is, those are California and Texas, are they not?

224—594 A. We have plants in California, but our plant in Texas makes no pipe whatsoever.

Q. California is a large oil-producing state, is it not?

A. Yes; it would be considered as a large oil-producing state.

Q. And this pipe-line business is the kind of business that you would certainly like to get if you could, isn't it?

A. The kind of business that we make at the Maywood plant—the type of pipe we make at the Maywood plant—is very acceptable to us at the proper price.

Q. Now, you do, do you not, sell a fairly substantial amount of equipment of all kinds to oil companies and oil refiners?

A. We don't sell equipment to the oil companies.

Q. Whom do you sell it to?

A. We don't sell equipment to anybody.

Q. You don't sell any oil-refinery equipment?

A. Not as such. You will have to define your word. Equipment to me means processed equipment or machinery.

Q. Now, you recall at the time this transaction was being reviewed in the Justice Department that you submitted data in response to a questionnaire?

A. I am aware of that; yes, sir.

Q. And in connection with that, you gave us a list of  
224—595 the principal products that Consolidated and its subsidiaries were engaged in manufacturing did you not?

A. I assume so.

Q. Well, I will show you this—

Mr. ALFRED WRIGHT. Do you mind if I look at it, counsel?

Mr. WRIGHT. Not at all. You have a copy of that, I take it?

Mr. ALFRED WRIGHT. No; I haven't. Thank you.

The COURT. This is one of the exhibits?

Mr. WRIGHT. I wasn't going to offer it. I was going to identify it.

The COURT. I am just asking for information.

Mr. WRIGHT. No; it is not in evidence.

Q. I will show you this mimeographed document here marked at the top Question 4, a statement, List of All Subsidiaries and List of All Products Manufactured by Consolidated and its Subsidiaries, and ask you if that is the answer you furnished which gives the data in question.

A. I will have to read it. I haven't personally supervised the assembly of this information.

Q. Go right ahead.

A. What part of this do you want commented upon?

Q. I am first attempting to identify it. I want to be sure that that is what you furnished. That is all.

224-596 Mr. WRIGHT. Counsel said he didn't have a copy.

Mr. ALFRED WRIGHT. I have one now.

A. Do you want a comment on this?

Q. I was going to ask you whether or not on that list that I just showed you, you have an item there "boilers, various kinds." Before that the item "API Oil Storage Tanks, All Sizes."

What does the "API" mean?

A. American Petroleum Institute.

Q. That refers to a specification, does it not?

A. That is correct. We don't class that as oil equipment, equipment for the oil industry.

Q. That is equipment that you sell to whom?

A. We sell to the oil industry, but it is not equipment. Equipment we classify as drilling rigs and rotary equipment or swivels or material of that kind.

Q. There was another item there called "Boilers, Various Kinds."

A. Yes.

Q. Do you sell any of those boilers to the oil industry?

A. No, sir, we don't. We haven't been in the boiler business since 1934.

Q. That was put on your list to indicate your capacity rather than anything you were then selling?

224-597 A. As I said, I didn't personally supervise this, but my opinion is that it has been lifted from an old catalog that we had.

Q. Do you know what the facts are about that?

A. I don't know about this.

Q. Have you got anyone here who does?

A. I think possibly we have.

Q. You can check that after you leave the stand, I take it?

A. I can tell you which of these we do and don't manufacture.

Q. As to this item "Caissons," do you sell that item to the oil industry?

A. No; not to the oil industry.

Q. Where does that go?

A. Caissons we would build for some dam project as a fabricated plate product for holding back water while construction work was going on.

Q. How about the item "Cracking Stills"?

A. Yes, sir.

Q. That goes to the oil industry?

A. Yes, sir.

Q. The item there "Culvert Pipe."

A. Yes, sir; we do. That doesn't go to the oil industry.

Q. That goes where?

224—598 A. That goes on highways.

Q. Another item you make there, "Flanging and

Dishing."

A. Yes.

Q. Can you explain what that is a little more fully?

A. Yes. I described this morning a pressure vessel of large diameter and considerable length, perhaps, and we close the end of the cylinder with a flanged and dished head. It is either semi-spherical or semielliptical in contour. That is part of the plate fabricator's job.

Q. When you refer to a pressure vessel, is that something different from a tank?

A. It very definitely is.

Q. What is the difference between a tank and a pressure vessel?

A. A tank is a container for holding water or oil or other liquid, which has simply a static head on it. It has no internal pressure built up.

A pressure vessel made of completely different materials, both physically and chemically, may be built, and in most instances is built, for the oil industry for high pressures.

As I say, the chemical content of the steel, the physical content of the steel, is completely different than the steel in a field erected storage tank or a field erected bolted tank.

224—599 Q. Do you make pressure vessels for what industry?

A. We make pressure vessels for anybody that wants them.

Q. The oil industry included?

A. That is right.

Q. How about this item "Gas Holders"? Whom do you sell that to?

A. Gas holders has been, at least, a very small portion of our work. We would sell those to the gas companies in the area.

Q. And your "Hemospherical Bottom Tanks and Towers." that is another item you make?

A. We are no longer in that business.

Q. When did you discontinue that?

A. About 1931 or 1932.

Q. You think that got in the list through some sort of an error?

A. I think that may be an ambitious sales approach here by error.

Q. You can check that for us?

A. Yes, sir; we can.

Q. You have an item "Oil Refinery Equipment." Can you tell us just what that includes?

A. We make no oil refinery equipment as such. We  
224—600 are not process people in any way, shape or form, such as I. F. Braun at Alhambra, California, who have process patents and who design, fabricate and erect complete oil refineries. We have no equipment as such.

Q. You think this item that is in here, "Oil Refinery Equipment," represents another error in the tabulation to the questionnaire?

A. I think it is probably, I don't know just what is referred to in that statement.

224—601 Q. Well, look at it. The statement at the top says, "List of all Products Manufactured by Consolidated and its Subsidiaries."

The COURT. I am not quite clear, Mr. Wright, what paper he is reading from. What are you examining him on now?

Mr. WRIGHT. I am examining him on an answer to a questionnaire submitted to his company by the Department of Justice just before the suit was filed for the purpose of reviewing the legality of the transaction.

The COURT. The difficulty I am in is that in my record here his answers to the contents of that paper will be in, but the paper itself will not be in our record.

Mr. WRIGHT. We are perfectly willing to have it put in.

The COURT. There has been no offer.

Mr. WRIGHT. I thought it was sufficiently identified when I first began to question him about it. I did at that time, I thought, identify this. I showed it to him and had him identify it as the list of items that his company furnished us at that time for that purpose.

The WITNESS. I advised you that I had not supervised the assembly of this material.

By Mr. WRIGHT:

Q. Yes, I understand that. But you recognize it as the material that was submitted by your company?

224—602 A. It could be nothing else, as I said.

Q. This item "Oil refinery equipment" on here, this should not have been on because you say you discontinued manufacture of that some years before?

A. That is right; back as far as 1931, 1932, or 1933 we discontinued and have not done any of it at all.

Q. You are quite sure about that?

A. Yes, sir.

Q. This pipe, "welded and riveted pipe lines and appurtenances" is that a correct description of items you are now engaged in making or were at the time this questionnaire was submitted?

A. We have done a large amount of riveted and welded pipes. Riveted pipes is a thing of the past. The art as now used is either the method that the National Tube uses in making line pipe or welded pipe.

Q. And that pipe lines and appurtenances there refers to what kind of pipe lines and what appurtenances?

A. Referred to there is the main, because that is the history of the company, is pipe furnished to water supply companies and the public agencies furnishing water to the communities, penstocks of considerable diameter in connection with the dam construction and powerhouse construction.

Q. The item "Standpipes"—do you make standpipes referred to here?

224—603 A. Yes, we will make standpipe for anyone.

Q. How about well casings?

A. We will make water well casing only.

Q. That field you don't make casings for the oil companies?

A. No, sir.

Q. You only make them for water use?

A. That is right.

Q. And do you make pipe lines for water supply lines as well as oil or gas lines?

A. Yes, sir.

Q. I show you this item here marked "Defendants' Exhibit 60" which purports to be a list of sales by years of Consolidated Steel Corporation and subsidiaries, and I call your attention to the column headed "8 Months of 1946" in which there appears to be an item for oil refinery equipment. Is the information that you furnished in the exhibit here erroneous or—

Mr. ALFRED WRIGHT. To which line are you referring, counsel?

Mr. WRIGHT. I am referring to the fifth line.

Mr. ALFRED WRIGHT. Where do you find the words "oil refinery equipment" in the fifth line?

Mr. WRIGHT. I beg your pardon, it says "refining equipment."

By Mr. WRIGHT:

Q. That refers to what kind of refining?

224-604 A. Without examining the detail I don't know.

By Mr. ALFRED WRIGHT:

Q. If you don't know, you can say so.

A. I don't know. I would have to examine the detail.

By Mr. WRIGHT:

Q. Is there any other kind of refining equipment that you make?

A. Well, there is fish oil refining.

Q. Do you make equipment for that purpose?

A. We make drums with paddles and cookers for the fish industry to get the oil out of the fish.

Q. Do you know what—

A. I wouldn't know.

Q. It is oil-refining equipment but you don't know what kind of oil; is that it?

A. I don't know what that particular item covers.

Q. Is there somebody here who can tell us so that you can find out?

A. I think we can find out for you, Mr. Wright.

Q. This same defendants' exhibit also shows an item for boilers in the first eight months of 1946.

A. Where is the item here? This 9,600?

Q. Yes.

A. Is this dollars?

Q. Yes.

224-605 A. \$9,604 worth of boilers?

Q. Yes.

A. Well, we during the war, and I don't know that that item covers what I am about to say, but I think possibly it does, during the war Western Pipe & Steel had a very large contract as a war contract to furnish boilers for Liberty ships, and I suspect that that very, very small item had something to do with cleaning up part of that contract. That is the only comment I can give you. We are not in the boiler business.

Q. In any event, you were making boilers last year and I take it you are equipped to make boilers if you find opportunity to do so?

A. No, we have gone out of the business. Our equipment is not now set up for boilers. The only reason is just like we built ships during the war and we are now out of the shipbuilding business, we are out of the boiler business.

Q. There is nothing to keep you from going back in, is there?

Mr. ALFRED WRIGHT. Objected to as being irrelevant.

Mr. WRIGHT. I submit the question is relevant.

The COURT. Wouldn't that apply to every individual and every company as well as this one?

Mr. WRIGHT. I think we are concerned here to some extent with the degree of potential competition that is involved.

The COURT. Of course I am going to allow the question, but would not the potential competition involve every company of any size or every individual that has any equipment?

Mr. WRIGHT. I should think there would be quite a difference in the potential competitive capacity of someone who had turned down a very substantial amount of a particular item in the past and someone who had never been in the business.

The COURT. I mean that there are no patents or any other favorable incident to their going back into the business.

Mr. WRIGHT. I am trying to find that out. I asked him a question which I supposed would develop any patent or other blocks if they existed.

The COURT. All right.

By the COURT:

Q. Did you understand the last question, Mr. Roach?

A. May I have it read?

(The last question was read by the reporter as follows:)

"Q. There is nothing to keep you from going back in, is there?"

A. The only thing that would keep us from going back in is our ability to get business. If we can't get the business we can't go back into the business; we can't go back into it again.

Mr. WRIGHT. Precisely.

If the Court please, I don't think we have anything further at this time. Of course, we would like to get cleared up these discrepancies which we asked about. Do I understand he was going to attempt to do it?

By the COURT:

Q. Do you understand what Mr. Wright is now referring to that you are to find out for him?

A. Yes, sir.

Mr. ALFRED WRIGHT. I suggest if counsel will tell me just what the items are I will mark them down.

The COURT. Mr. Wright has indicated that he is through with the witness except for those questions, and he will give you those.

Redirect examination by Mr. ALFRED WRIGHT:

Q. Mr. Roach, at the time that you had your first conversation with Mr. Fairless or, as a matter of fact, at any time that you conferred with Mr. Fairless did you tell him that you had negotiated

with or were purposing to negotiate or were negotiating with Bethlehem for the sale of the Consolidated Steel Corporation?

A. Repeat that question.

Q. Did you ever tell Mr. Fairless in the course of your negotiations for the sale of the assets that you were negotiating also with Bethlehem and that you proposed to sell to Bethlehem if not to him?

224-608 A. I told Mr. Fairless that I had discussed the thing with Bethlehem but that negotiations had concluded.

Q. And they were not pending at that time?

A. They were not.

Q. In regard to these steel prices on the West Coast, after the purchase of the Geneva plant and after the Steel Corporation joined in this application for a lower rate the fabricators on the West Coast have obtained and are now obtaining lower rates than they had before that time?

A. That is correct.

Q. Counsel said in one of his questions relating to that refinery equipment item "You know that it is oil refinery equipment but you don't know what kind of oil?" And you stated "Yes." Is it correct that you know that was oil refinery equipment?

A. Which question are you referring to?

Q. Counsel interrogated you with reference to an item of what he first said was oil refinery equipment.

A. Yes.

Q. And I pointed out to him that he was in error, and he corrected it, and at the end of his questioning in that regard he said, "You know that it is oil refinery equipment but you don't know what kind of oil?" Do you know that it was oil refinery equipment?

A. I am sure it is oil. I don't know what kind of oil.

Q. You don't know what kind of oil?

224-609 A. That is right. Because the only refinery work we do is for the oil business, either fish oil, vegetable oil, or petroleum.

Q. And the item of boilers has no reference to whether you were building boilers at that time or not, does it?

A. No.

Q. It might mean repairs to boilers?

A. Very likely.

Q. Cleaning boilers?

A. It might be. I have no knowledge of that detail.

Mr. ALFRED WRIGHT. That is all.

Mr. MILLER. I would like to ask the witness one question, if I may.

The COURT. Let me see, Governor, how do you get into this?

Mr. MILLER. Well, we represent different parties.

The COURT. Is this direct examination or cross-examination?

Mr. MILLER. I would not want to characterize it. It is either one.

The COURT. It is not very cross, I am sure.

Mr. MILLER. But I think it is quite pertinent.

The COURT. Is there any objection, Mr. Wright?

Mr. WRIGHT. No, not at all.

The COURT. There is no objection.

224-610

By Mr. MILLER:

Q. In answer to counsel you just said that the situation you had complained of with respect to price of steel had been corrected somewhat. I would like to have you explain now.

A. Prior to early in this year we were paying the same prices for steel, relative prices for steel that had existed up to that time. Then they established a Geneva base price of steel and they priced steel at Los Angeles, using that base plus the freight down to Los Angeles. Then our freight rate between Geneva and Los Angeles which we all worked hard to get was lowered to the end that we are now paying a lowered price that I have indicated.

Q. Did the consumers get the benefit of that freight reduction?

A. The consumers received all of it.

Q. Was that due to the fact that price bases were established at Geneva?

A. Yes, a new base price at Geneva of \$3 a ton higher than the Eastern base price was established, and the Western industry felt very good about that. They think it is a very favorable move.

Q. And that is the result of the Geneva steel plant being in operation?

A. That is right.

Mr. MILLER. Thank you.

224-611

Mr. ALFRED WRIGHT. No further questions.

Mr. MILLER. I would like to recall Mr. Lawrence for just one correction.

BERTRAM M. LAWRENCE, recalled as a witness on behalf of the Defendants, having previously been sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. You were asked by counsel for the fabricating structural capacity of the American Bridge and Virginia Bridge companies, and you gave a sort of a guess as to the amount, 600,000 tons. Have you checked that?

A. Yes, sir, I have the official figures.

Q. What is it?

A. 788,000 tons.

Q. And you referred to the capacity of the Consolidated Company on which you made your estimate of the reproduction cost of like facilities at 200,000 tons.

A. Yes, sir.

Q. Did that include both plate and structural?

A. Also sheets. All three.

224-612 Q. Have you ascertained or are you able to give an estimate of the amount of structural capacity?

A. I can give you our estimate of 62,000 tons a year of structural capacity in Consolidated. The rest is plates and sheets.

Mr. MILLER. That is all.

The COURT. Any questions?

Mr. WRIGHT. We have no questions.

224-613 BENJAMIN F. FAIRLESS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Will you state your name, please?

A. Benjamin F. Fairless.

Q. Mr. Fairless, where do you reside?

A. In Pittsburgh; near Pittsburgh, Pennsylvania.

Q. You are president of the United States Steel Corporation?

A. I am.

Q. And of the United States Steel Corporation of Delaware?

A. I am, sir.

Q. How long have you been?

A. I was elected president of both companies in December 1937, the election to become effective January 1, 1938.

Q. And as president of the United States Steel Corporation of Delaware, are you charged with the responsibility for the operations of the subsidiary companies of the U. S. Steel?

A. I am, sir.

224-614 Q. And is that your particular job?

A. That is right.

Q. Now, did U. S. Steel design, construct, and operate the Geneva plant for the Government?

A. They did, and at the request of the Government.

Q. And without compensation?

A. Without compensation of any kind.

Q. In the year 1945, did you give consideration in the early part of the year, to the possible operation or acquisition of the plant for peacetime use?

A. I did, and also my staff.

Q. Well, did you assign to your staff the task of making a thorough study of that subject?

A. I did, sir.

Q. Was such a study made?

A. A study was made and a report rendered.

Q. That was prior to VJ-day in August 1945?

A. That is right.

Q. Had that plant been designed at all with reference to peacetime use?

A. No consideration whatsoever to peacetime operation.

Q. Or to the demands for the products which might be developed in peacetime?

A. Entirely a war project.

Q. Do you recall a meeting of the Directors in the summer of 1945, Directors of the U. S. Steel Corporation, at which you presented the subject of whether the Steel Corporation would attempt to acquire the plant?

A. I do.

Q. Was that subject also reviewed before the Board by Mr. Lawrence?

A. It was. Mr. Lawrence presented all the details and statistics and compilations that had to do with the study that had been made.

Q. And, had you at that time come to the conclusion yourself on the subject?

A. I had and made a recommendation.

Q. What was that recommendation?

A. That recommendation was that we should not enter into negotiations for the purchase or the lease of the property.

Q. Will you please state to his Honor briefly the principal reasons which led you to that conclusion?

A. Well, your Honor, it was a very questionable venture for the United States Steel Corporation to embark upon under the most favorable conditions, in my opinion.

We had quite a variance of opinions among our own organization as to the merits of attempting to purchase or lease this company.

While we were in the midst of this study, we were attacked publicly by various people, within and without Government, and those attacks followed about the same patterns.

One was if the Steel Corporation should acquire or lease the Geneva Steel plant it would not be for the purpose of operating the plant; it would simply be for the purpose of closing it down

in order to favor their own Eastern or Southern existing operations.

Another attack was, which wasn't specific so far as the Steel Corporation is concerned, but in general so far as the steel industry located in the so-called East, and that was to the effect that the Geneva Steel plant should be operated by Western people, by people who were definitely and without question interested in the West and the industrial development of the West.

These attacks coming at a time when we were just at odds to really come to the conclusion really caused me to recommend to my Board, which I did, that we notify the proper authorities that we were not interested in the purchase or lease of this property.

Q. Did you so notify the president of the Defense Plant Corporation?

A. I did.

Q. Now, at that time the end of hostilities was right in sight, weren't they?

A. That is right.

224-617 Q. You were anticipating that the end would come any day?

A. The end was in sight, and besides that the business, the orders, for the products of that plant had already fallen off materially and operations had likewise fallen off.

Q. Was the plant practically closed down after the hostilities ceased?

A. It was completely closed down with the exception of heating, making and generating heat for heating purposes.

Q. Heating purposes to preserve the plant from deterioration?

A. And to protect the property.

Q. Well, when did you next take up the question or give consideration to the question of the Geneva plant? I will put it this way:

Did you again, in the early part of 1946, reexamine this question?

A. Yes.

Q. What led you to do it?

A. Well, during the period in which we had announced to the Government and the public that we were not interested in the purchase or lease of this property, a great amount of pressure was exerted upon myself and all officials of the Steel Corporation, including members of the Board—

Q. By whom?

224-618 A. By various people. People in Government, for example. I cite you in Utah, both United States Senators, Senator Murdock and Senator Thomas talked to me, called me—

Mr. WRIGHT. If the Court please, this might be an interesting conversation, but I fail to see its possible relevance here as to what the Senators from Utah or any other Senators said to Mr. Fairless at any time about this matter or any other, as far as that goes. I just don't see on what issue that is supposed to bear.

The COURT. I will hear you, Governor.

Mr. MILLER. I don't care to go into it in any great detail.

Q. What about officials of United States Government itself? I mean people charged with the responsibility—

Mr. WRIGHT. Just a minute. If the Court please, I say, well, what about it? What is he proving or what is the significance of this line of questioning? We are going very far afield into a whole list or series of conversations and talk about pressure from this, that and the other source.

Mr. MILLER. I will ask this question.

Q. Would you name the officials charged with the responsibility for the disposal of the Geneva plant who asked you to reconsider your determination not to bid for it?

A. Mr. Husbands and Mr. Gregory—

Mr. WRIGHT. I think it can be fairly assumed the 224—619 officials in charge of the disposing of the plant were anxious to dispose of the plant. They asked Mr. Fairless to bid. There isn't any dispute about that. What is the purpose of all this background in any event?

The COURT. When you say there is no dispute about it, I know nothing about it. If you admit it is material and relevant, the mere fact that you admit it—

Mr. WRIGHT. I don't admit it is material or relevant. I say, assuming that they did ask him to bid, we would not dispute it. Assuming they didn't ask him to bid, in either case, it is not an issue on which we would offer any evidence, because to us it is completely immaterial and I don't understand on what theory—whether somebody asked them to bid or didn't ask them to bid—that could possibly affect any of the issues that are before your Honor for decision.

Mr. MILLER. I don't think it is highly important.

The COURT. All right.

Mr. MILLER. If there is any doubt about it, I don't think it is highly important.

The COURT. You don't press it. All right, proceed.

The WITNESS. I would like to add the names of Symington and also Jesse Jones.

Mr. MILLER. It has been ruled out.

The WITNESS. I didn't finish my statement.

224—620 The COURT. It is just a little bit more to be ruled out.

By Mr. MILLER:

Q. Well, did you at sometime in 1946 take up the reexamination of the question?

A. I did, sir.

Q. And did you cause another study to be made?

A. I did.

Q. Now, I will ask you this:

Did the changed attitude of Government officials have something to do with the conclusion you then came to?

Mr. WRIGHT. If the Court please, I don't see the relevancy of that. What in the world has it got to do with it? How is it? That is what I would like to know.

Mr. MILLER. It is simply a circumstance for whatever weight it has.

The COURT. Circumstances for what?

Mr. MILLER. A circumstance showing, explaining why, having come to one conclusion at one time, he came to another conclusion at another time, acting on the suggestion of the officials who had the plant to dispose of. Merely a circumstance.

The COURT. Circumstances showing a change from one conclusion to another. I am afraid you will have to establish the materiality of the first conclusion.

Mr. MILLER. All right, we will do it right now.

224—621 Q. Did you, as a result of the subsequent reexamination given to the subject, make another recommendation to your Board?

A. I did, sir.

Q. About when?

A. About—I have the exact date here—it was in April.

Q. In April?

A. April 1946.

Q. Did you then recommend to the Board the submission of the bid?

A. I recommended to the Board that we submit a bid to purchase but not to lease.

Q. Did the Board grant you authority to do it?

A. They did.

Q. And it was pursuant of that that the bid which is now in evidence here, in Exhibit 64—

Mr. WRIGHT. I don't think the bid was in evidence. I don't think we have a copy of it.

Mr. MILLER. It is in the official report. All of the bids are in one of those reports. It is in the report of May 10 of the War Assets Administration to the Congress. It is Exhibit 64.

Q. Following that bid it was accepted finally?

A. It was accepted.

224—622 Q. And following the opinion of the Attorney General on June 17, was the contract entered into?

A. That is right.

Q. It was purchased in the name of Columbia?

A. In the name of Columbia.

Q. Columbia Steel Company entered into a purchase contract with whom?

A. With the War Assets Administration.

Q. Now, counsel tells me that that was June 19. That would be two days after the opinion of the Attorney General?

A. That is right.

Q. Following the consummation of the transaction, did you instruct your staff to investigate the subject of how best to operate the Geneva plant and what needed to be done?

A. I did, and, of course, we had been making as a part of our original studies, what would be required as a load for the successful operation of the plant.

Q. As a matter of fact, in the summer of 1945, had you decided to install or erect or construct through the Columbia Steel Company a cold reduction mill at Pittsburg, California?

A. We had.

Q. Had the plans been made?

A. They had.

Q. Were estimates being obtained from contractors in the summer of 1945?

A. They were.

Q. And that mill was expected to require for its finishing purposes how much tonnage?

A. About 386,000 tons of hot-rolled coils for cold reduced tinplate and sheets.

Q. Where did you then expect to obtain those coils?

A. From Birmingham, Alabama.

Q. You had the equipment at the Birmingham plant with some slight changes to produce the necessary coil?

A. We had, sir.

Q. And could ship them by water to Pittsburg?

A. We could.

Q. Pittsburg is on the water with a dock for oceangoing boats, is it?

A. That is right.

Q. And Birmingham?

A. Birmingham is right near—the port of Birmingham is on the Warrior River, which is a direct connection to Mobile and the ocean, and then, of course, to the Pacific and Pittsburg, California.

Q. Now, when you consummated this transaction with the Government, did you propose instead to use that tonnage as a backlog for Geneva? Did you say in your bid that you intended to?

224—624 A. Yes. We made it very clear in our bid—

Mr. WRIGHT. If the Court please, I think the bid speaks for itself. He has the bid in evidence.

Mr. MILLER. All right. It is all explained both in the report that is offered in evidence and in the bid. It is a fact. I simply wanted to get it visually before your Honor, but I won't take time.

Q. Now, coming back to the situation when the consummation of the bid was made by the completed contract on the 19th of June, what did your organization or staff advise you with respect to what ought to be done to provide a further backlog for Geneva?

A. My staff advised me that in addition now to the load, backlog load, that would be provided through the production of 386,000 tons of hot-rolled coils, that we should have, that we must have, a fabricating outlet in order to protect and give us a backlog tonnage for our structural mill.

Q. How could you have the fabricating outlet? What did you do to get that?

A. One of two things; either build fabricating facilities or acquire existing facilities.

Q. Now, as a matter of fact, had the American Bridge Company submitted plans, tentative plans, and appropriation requests for that purpose some time before?

A. They had.

224—625 Q. How long before?

A. Several years before. As a matter of fact, the then president of the American Bridge Company, who has since retired, Mr. L. A. Paddock, had long been an advocate of the American Bridge Company having fabricating facilities properly located on the Pacific Coast.

Q. Your principal competitor, Bethlehem, had established such facilities long before?

A. That is right.

Q. How far had Mr. Paddock gone?

A. They had gone quite a long ways. They had made tentative layout for the size plant.

First of all, I should say, they had decided that there should be two plants rather than one plant; one plant to be located in the San Francisco area and one in the Los Angeles, keeping in mind that they are 400 and some miles apart, those two cities.

Also, they had made layouts of the size of the plants and the equipment to be installed, and also had sent men out and, as a

matter of fact, Mr. Paddock himself made several trips in reviewing possible real estate locations where there was vacant property.

Also, a tentative cost of the plant had been drawn up and had been submitted to Mr. Lawrence of my staff for review, and the war came along, of course, and that was all out of the question.

224—626 Q. The top organization had not finally passed on the subject when the Geneva proposition came along?

A. They had not.

Q. They had not authorized the Bridge Company to go ahead?

A. They had not.

Mr. MILLER. I won't go into the reasons. Probably counsel may if he wishes: He would probably object to it if I attempted to, but he is free to inquire.

Q. I am back now to after you had acquired the Geneva plant and were considering what you were going to do to give it a backlog. Did you consider the question of constructing facilities on the Coast?

A. Myself?

Q. Yes.

A. Oh, indeed, indeed.

Q. Why didn't you do it?

A. Well, the reason I didn't do it I knew from the conversations that I had had—we have Geneva at this point?

Q. Yes.

A. I will go back to the conversations I had with Mr. Roach.

Q. All right, state those to the Court, what those previous conversations had been.

A. Well, Mr. Roach approached me in the fall of 1945 in my office in New York and suggested that his company  
224—627 might be for sale and that he thought it would be a very fine acquisition on our part and good on his part; and so forth; so I had the knowledge beginning then that Mr. Roach was thinking along those lines.

Q. Did you give him any idea at that time what you were thinking?

A. I was simply a good listener at that point.

Q. Did you have another talk with him later?

A. I did. I had another talk in February or early March.

Q. How did you come to have that talk?

A. Well, I went to Pasadena supposedly for a vacation, but between visits of Governor Maw of Utah and a few other people who were bringing pressure on me to do something about the purchase of Geneva, also Mr. Roach came along and reopened the

subject which he had previously discussed with me in New York in the fall of the previous year—

Q. What did he say to you? When you say reopened it he restated practically what he had said before?

A. It was just simply a statement. It was not on the basis of negotiations or it was not on the basis of "Our company is for sale at such and such a price." It was simply an idea that Mr. Roach presented, and it was that he thought it would be in the best interest of his owners, his stockholders, to dispose of his company, and that likewise he wanted to dispose of his company or assets to a company that needed those kinds of facilities, and 224—628 he said, "Therefore I am talking to you."

Q. What did you say?

A. I told Mr. Roach that we of course as we always do, we always consider any suggestions that are made to us, providing they are within the realm of reasonability, and I would be very glad to think about it.

Q. Was anything said about Geneva?

A. Well, there was nothing said about Geneva. There was plenty said about Geneva every place I went on my vacation. That is practically all I heard certainly. You could not meet anybody on the Pacific Coast in February or March of 1946 unless Geneva was the all-important subject. I did tell Mr. Roach that we were reconsidering our previous decision and that a study was being made right at that time and the results of that study would not be known to me until after my return, which they were not.

Q. You did not tell him that your discussion about buying the facilities of Consolidated depended on your acquiring the Geneva plant?

A. Oh, my, no.

Mr. WRIGHT. If the Court please, a certain amount of leading here, I submit, will save time, but I don't think it is necessary to put all the answers in the witness's mouth.

Mr. MILLER. Are you suggesting that I am doing that?

By Mr. MILLER:

Q. But precisely what did you say to Mr. Roach on 224—629 that subject?

A. Well, I said simply to Mr. Roach that while we had announced our decision that we were not interested in acquiring Geneva that we were making a restudy, a new study and that I had appointed a committee, and that committee was at work and had been for some time and I hoped that their report would be ready for me upon my return.

**Q.** Well, what had that to do with his suggestion of your acquiring his property? Did you say anything to him on the subject that you wished to get rid of that business before you took up the question with him?

**A.** Oh, I said of course until—I was inferring that of course until I had my report, which I hoped to get upon my return, until we decided whether or not we were going to bid for Geneva or not; until that matter was completely disposed of I would have nothing further to say on this subject.

**Q.** Did you say anything to him to the effect that any future discussions that you might have with him on the subject of acquiring Consolidated depended on what you might do about Geneva?

**Mr. WRIGHT.** I submit, Your Honor—

**A.** The answer is no.

**Mr. WRIGHT.** I submit the proper way to get the conversation is to have him say what it is.

224—630 By Mr. MILLER:

**Q.** Have you stated fully the conversation?

**A.** I have, sir.

**Q.** Now I ask you the direct question: Did you say to him anything in form or words or substance or intent to convey any impression that any future discussions that you might have would be dependent on what happened in reference to Geneva?

**A.** No.

**Mr. WRIGHT.** Just a moment. If the Court please, this is pure argument. He has already stated the conversation and the Governor is at perfect liberty to argue what the effect of the conversation is; but it adds nothing to put the argument in the form of an answer from the witness. It is wholly improper.

**The COURT.** It is not uncommon, Mr. Wright, having gone through a thing to ask the witness did you directly or indirectly say such and such a thing.

**Mr. WRIGHT.** I think after the conversation has been fully testified to and he said what he did state that it is at least redundant.

**The COURT.** I don't understand there is any question before me now.

**Mr. MILLER.** He has answered the question. The answer stands, I take it.

By Mr. MILLER:

**Q.** Go back now to where we left off. You say you 224—631 had been advised by your staff that U. S. Steel should become interested in one way or another in actual fabrication on the Coast? What decision did you come to tentatively and why?

A. Well, I came—may I elaborate a little?

Q. Yes.

A. First of all it was perfectly obvious to me from the beginning, as it must be to any steel man, that if we acquired Geneva we must have fabricating facilities—structural steel fabricating facilities. As I said before in my testimony, there was one of two ways to acquire it: One was through acquisition of existing facilities, the other was to create new facilities and do the same thing.

Q. What was the objection to the creation of new ones?

A. The reason that I decided and recommended to my Board eventually after further talks with Mr. Roach that we go the purchase route was that those facilities fitted our needs and they were already in existence; but to go the other route by creating new facilities meant two or perhaps three years under conditions as they then existed and have continued to exist; so it was simply that. Of course, at that point I didn't know what Mr. Roach's idea was of price. That had all to be developed through negotiations, so it was not a decision on my part that we were going to buy the assets of Consolidated. The decision was that we were willing to seriously begin negotiations with Mr. Roach for the purchase.

224—632 Q. And upon the result of those negotiations, then, your decision as to whether you would build new facilities might turn?

A. That is right.

Q. Did you ever suggest to Mr. Roach that you were contemplating the possibility of constructing fabricating facilities yourself?

A. No; I did not.

Q. Never hinted at it?

A. No, sir; I did not.

Q. But you did have both methods of approach to the problem under consideration up to the time you finally made the decision and the deal with Consolidated, did you?

A. Yes.

The Court. We will take a five-minute recess.

(At this point a brief recess was taken.)

BENJAMIN F. FAIRLESS (resumed).

Direct examination (continued) by Mr. MILLER:

Q. Now, testimony has been given here as to the appointment of a committee to examine the physical plants and the business of Consolidated and later on a negotiating committee. I am not going to take the time to repeat that. Did you outside of these

preliminary discussions that you had with Mr. Roach have another discussion on the telephone?

A. Yes.

Q. When you told him you would consider it?

A. Yes, sir.

Q. Later on you had one in New York?

A. Yes.

Q. Did you leave the subject of negotiating the price entirely to a committee that you appointed?

A. I did, sir.

Q. Who constituted that committee?

A. Mrs. Howe, Lawrence, Blough, and Rooney, all Vice Presidents of the United States Steel Corporation.

Q. Did you take any part in that discussion at all?

A. I was not present during the discussion.

Q. Was the fact reported to you that an agreement had been reached on what the parties considered a fair price?

A. A tentative agreement subject, of course, to the approval of the respective Boards of both companies and stockholders of Consolidated.

Q. Of course the stockholders of Consolidated also had to approve?

A. Yes.

Q. Now, the respective Boards did approve?

A. They did.

Q. The matter is still pending and has not yet been finally submitted to the stockholders of Consolidated?

A. Well, I can't answer that. I assume that is true.

Q. Well, at any rate—

A. That is why we are having the lawsuit, I guess.

Q. Now, sir, I ask you in that transaction, in consummating it or any stage of it did you ever have the slightest thought, intent, or purpose to restrain trade and commerce and to eliminate competition or a competitor or to monopolize in any respect?

A. No, sir.

Mr. WRIGHT: If the Court please, that I take it is the conclusion that your Honor has to draw from all the evidence here. I object to the witness's undertaking to draw the conclusion for you.

The COURT. Well, it is only as to his intent.

Mr. WRIGHT. Yes. I take it the question of what he intended, insofar as intent is relevant under the Sherman Act at all, is something that has to be derived by your Honor from a consideration of all of the evidence rather than what Mr. Fairless' statement as to his intent might be in any event.

The COURT. Well, I can see that the burden falls on me regardless of intent.

If it is an objection I overrule it.

Mr. MILLER. I might say, your Honor, you may recall that counsel himself in his opening stated that we acquired this property for the purpose of preventing our competitors in the production of rolled steel products from selling any of their product to Consolidated. He himself raises the question of our actual purpose.

224—636 By Mr. MILLER:

Q. By the way, did you have any such thought as I have just suggested of preventing anybody from selling anything?

A. No, sir.

Q. What was your purpose and object in negotiating and consummating that transaction?

A. The object was just one, one motive and only one motive, and that was to secure sufficient backlog to operate the newly acquired Geneva Steel plant on a successful basis from the standpoint of furnishing satisfactory employment to almost 6,000 employees and also fulfilling the obligation which we had made to the Government and to the citizens of the West that we would, to the best of our ability, operate that plant successfully and in the interests of building up the industrial west. That was the only objective that I had at that time, and the only one I still have.

Q. Has it still been demonstrated whether the Geneva plant can operate commercially in normal times?

A. We haven't had normal times, certainly, since we acquired Geneva.

Q. Then your answer is no?

A. The answer is no. That is right.

Mr. WRIGHT. Will you read the question, please?

(The reporter read the question referred to.)

224—637 Q. What is the effect of the successful operation of the Geneva plant on your Eastern operation?

A. Well, it is perfectly obvious that any steel that had been sold on the Pacific Coast and manufactured in our Eastern plants, that will now be manufactured in the Geneva plant and delivered to that same area, will reduce the operations in the plants proportionately. Now, what the respective operations might be in the various territories due to many other conditions, I am not, of course, able to say.

Q. What is the effect of the operations of the Bridge Companies?

A. The effect of many, not only the Geneva operation, but also the increased costs of transportation would, of course, occur generally all over the country as one effect, and that is to localize manufacturing.

The cheaper the transportation, it is perfectly obvious, the more affield the manufacturers can go with their finished products. High transportation costs have the effect of localizing and centralizing manufacture and distribution.

So, answering your question direct, the effect of the purchase of Geneva and the other elements that have happened will affect the Bridge Companies' operations adversely, both Bridge Companies.

Q. As a matter of fact, basing points have been established at Geneva?

224—638 A. Basing points have been established at Geneva on the products made at Geneva.

Q. Well, of course.

A. And will be if there are any new ones made.

Q. And an application was made to the Interstate Commerce Commission for a reduction of freight from Geneva. That has been temporarily allowed?

A. It has.

Q. So that his honor will understand, the delivered price of Geneva products is computed how?

A. It is computed with the basing point price of the product at the point of production plus the cost of transportation to destination.

Q. Price base then plus freight?

A. Plus freight.

Q. When the freight rate was reduced, who got the benefit of that reduction?

A. The consumers, every penny of it.

Q. And that reduction in the ultimate cost of the consumers, those in the fabricating business as well as others, coupled with the increased rates, trans-continental rates, to a large extent eliminated the Eastern manufacturers from the products that can be produced in sufficient quantity in the West?

A. It certainly made it more difficult for them to  
224—639 compete.

Q. Now, did you anticipate these changing conditions in reference to freight rates, increases, during the time this discussion was on between you and Mr. Roach?

A. Certainly. I don't recall that the freight rate picture was a part of our discussion, but it certainly was a part of my thinking and the part of my staff's thinking in arriving at the conclusion that they came to, in recommending that we either purchase some existing facilities or create fabricating facilities. We considered all these factors.

Q. Now, you have mentioned employment. Is it a fact that as a result of the construction of this plant at Geneva a community around that plant became dependent upon it for employment?

A. Yes, sir. In the month of May we had 5,800 plus employees at Geneva and we are short about between two and 300. We require two or 300, principally coal miners, that we are not able to get. So we have there represented in that operation a total of about 6,000 people if we have a full complement.

Q. I don't suppose you are seeking to pose here as a public benefactor. You are in business for a profit?

A. For a fair profit.

Q. And do you consider that the policy you have outlined is in the best interests of your stockholders in the long run  
224-640 although you may submit to some temporary disadvantages?

A. I do, sir.

Mr. MILLER. You may examine.

Cross-examination by Mr. WRIGHT:

Q. Mr. Fairless, the price that is set out in this bid that you made in this Defendants' Exhibit 64, that is the price at which you actually bought the property, is it not?

Mr. MILLER. He doesn't know the number of the exhibits.

A. I assume any information there would be correct.

Mr. MILLER. That is correct. You may rely on that. It is official.

A. (Continuing.) The price was \$40,000,000 plus the inventory values at the time that the transaction would be completed, which was estimated at about \$7,000,000, making a total purchase of about \$47,000,000.

Q. The price that you bid was the price at which you got the property. It wasn't a negotiated price between you and the Government in any sense of the word?

A. No; the Government asked for closed bids.

Q. Yours was the only bid for the purchase of the property; is that right?

A. That is not correct.

224-641 Q. What was the other bid for the purchase?

A. You have them.

Q. Perhaps I should say the only bid that the War Assets Corporation did not reject.

Mr. MILLER. You may say the only good-faith bid.

A. I don't think it is my responsibility.

Q. I wasn't talking about your responsibility. I was trying to get at what the facts were. Yours was the only bid which was regarded by the War Assets Corporation as acceptable; is that correct?

A. At least it was the bid that was regarded as the most acceptable.

Q. Do you know whether it was the only one of them considered or not?

A. I was not a member of the War Assets Administration.

Q. You say there was one other bid for purchase?

A. Only the record that I have seen. I think Colorado Fuel and Iron made a bid, the details of which I have forgotten.

Q. In any event, this bid that you made, that price that was set forth there, I take it, was not the result of anything Governor Miller told you today, but the result of actual cold calculation as to what the plant was worth to the Steel Corporation; isn't that right?

224-642 A. Definitely.

Q. And you succeeded in getting the plant for about 20 or 25% of what it had cost the Government to construct it, did you not?

A. Well, whatever it was.

Q. That was about what it figured, wasn't it?

A. Well, if it was that, I am willing to concede that, but I should like to say we developed our bid not on the basis of what the plant cost but what the plant was worth to us as a purchaser.

Q. Yes, I understand that. As a result of the acceptance of the bid, you got, did you not, a very modern, efficient rolling mill at a price per ton of capacity that was well below the average investment of the corporation in similar rolling-mill facilities?

A. Oh, no.

Q. No?

A. Oh, no. Let me understand your question, if I may.

Mr. WRIGHT. Read the question.

(The Reporter read the question referred to.)

A. The answer to that is no. I didn't misunderstand your question, and I will explain it this way.

Q. Go ahead.

A. That we had similar capacities both in steel making, blast furnaces and rolling mills whose book value today is, 224-643 less than what we paid for these facilities at Geneva. If your question was directed to what it would cost to replace those facilities, then the answer is no.

Q. I followed it up to the last point. I take it from your explanatory matter that the answer would be yes, if you compared your investment in terms of the replacement cost, and it would be no if you compared it in terms of book value.

A. It would cost us more to reproduce the same facilities that we bought at Geneva, more than we paid for them.

Q. Would you say your average book value of investment in rolled-steel facilities is less or more than the book value of your investment per ton in the Geneva facilities?

A. I haven't those figures before me, but my guess is that our book value would be—depreciated book value would be—less.

Q. You have now had some experience with the actual operation of the Geneva plant since you bought it, haven't you?

A. We have, sir.

Q. The fact is, you are actually operating it today at capacity, are you not?

A. We are operating seven out of nine furnaces. We are operating three blast furnaces and seven out of the nine open-hearth furnaces.

224—644. Q. What is the annual tonnage rate at which your current operations are now?

A. I should say they would be around 85% of theoretical capacity.

Q. And theoretical capacity is what?

A. Between 1,200,000 and 1,300,000 tons of ingots.

Q. How about as to the plates and shapes? Do you know whether the figure would be the same as to both those classifications?

A. You mean as to how we are operating?

Q. Yes. What are you producing at Geneva currently? What is the tonnage made up of?

A. We only have two products that we make at Geneva: one is plates and the other is shapes, together with some semifinished billets, which is a very small tonnage.

Q. And your 85% figure relates to both plates—

A. My 85% figure relates to the theoretical ingot capacity of the plant. Now, how much of those ingots go into plates and how much into shapes is a variable that depends on the scheduling. It will vary from one week to another.

Q. Do you know what the current rate is in terms of tons of plates per year?

A. No. I don't carry those figures. I don't know—give me some idea what you want to find out. I can even help the situation, I believe, by telling you that we have enough

224—645 business out there to operate everything we have now, and the only reason we are not operating all our furnaces is because we are in difficulties with the quality of our coal. We have had that all the time. We have had not as satisfactory metallurgical coal as we would wish, so we are unable to get the full capacity; but it is not because of a lack of business.

Q. That demand which enables you to operate at full capacity all of the facilities there that you are technically able to operate has prevailed for how long?

A. Well, it has prevailed for the last certainly six months—five months. At least the demand was there longer, but you can't just buy a steel plant and start it up next Monday morning.

Q. It wasn't until about six months ago that you actually had the plant in shape to operate at this 85%; is that correct?

A. That is correct. We were short of men. Our men had to be imported and also we were having difficulties with our coal.

Q. The bid that you made described in some detail these facilities for making hot rolled strip that you proposed to install at Geneva and cold reduction facilities that you were going to build at Columbia.

A. Are building.

Q. What is the status of those developments? Has the cold reduction mill at Pittsburgh, California, been built?

224—646 A. It is being built.

Q. That is in the process of construction?

A. Likewise the facilities for the manufacture of hot rolled coils is also being built in the shops of the various equipment builders and is being delivered. We have had a keen disappointment there both in Pittsburgh and Geneva in the promised delivery of our electrical equipment which is holding us back some.

Q. Those facilities are expected to go into production about when?

A. We are hoping for the latter part of this year or certainly the early part of next year unless we have further delays in our deliveries.

Q. Under the proposal you made in your bid you stated, I believe, that about 380,000 tons of the Geneva capacity would when these facilities were erected and in operation be devoted to the hot rolling of material which would go to the Columbia mill at Pittsburgh, California, for cold reduction; is that right?

A. That is right.

Q. But so far you have operated at full capacity without rolling any hot rolled coils or any of this product of the kind that would go to Columbia?

A. That is right.

Q. For cold reduction?

224—647 A. We have operated at our full capacity to the extent of our ability.

Q. To the extent of your technical ability?

A. Yes; the extent of our furnaces there.

Q. Have you any idea where the tonnage that has been produced there during the last six months at Geneva has gone?

A. It has gone all over the country. Some of it has come back to—enlarged tonnages have come back to Milwaukee, that far east.

Some of it has come to Pittsburgh, Pennsylvania. It is coming there every day.

Q. Well—

Mr. MILLER. Let him answer, please.

Q. Is there anything more you want to say?

A. I was trying to answer your question.

Q. Is there anything more?

A. I would like to complete the answer to the question if I may. The question was, I understood, where has the tonnage been going?

Q. Yes.

A. It has been going to the Pacific Coast; it has been going to many points in the South; it has been going as far East as Milwaukee and Pittsburgh, Pennsylvania.

Q. Perhaps I should have been more specific. Have you got any figures which show the tonnage that has gone to Consolidated during this period from Geneva?

224—648 A. Well, I haven't. I am sorry. Mr. Roach undoubtedly could have answered that question better than I. It is a substantial tonnage.

Q. You don't know what the figure would be?

A. I don't carry all those figures in my mind.

Q. Actually Consolidated represents, does it not, the most substantial or largest single customer that you have for the sale of rolled products—that is, plates and structural shapes in the West Coast area; isn't that right?

A. It would be one, I should assume. I cannot answer your question because I don't have the figures. I would be very happy to supply them.

Q. I will show you some figures that you did supply or rather Columbia Steel Company supplied—

Mr. MILLER. This witness has not supplied you any figures. He does not deal in them.

Mr. WRIGHT. Let us see what he knows about these figures.

By Mr. WRIGHT:

Q. I show you this mimeographed sheet here which is labeled "Answer to Question 11: The 20 largest steel fabricators on the Pacific Coast who are potential purchasers of steel from Geneva and other steel plants and the approximate tonnage which those companies purchased from Columbia Steel Company and other subsidiaries of United States Steel are as follows:"

224—649 Now, do you recognize those figures as figures that were submitted by Columbia in connection with the Department of Justice review of the transaction?

A. I am sorry, Mr. Wright, I haven't seen those figures.

Mr. MILLER. He will probably accept them and I say to you now we accept them. Use them in any way you want to.

Mr. WRIGHT. That solves the problem of identification. Governor Miller has stated that these are figures which were submitted.

Mr. MILLER. I assume so. I haven't seen what you have in your hand.

Mr. WRIGHT. Look at it.

Mr. MILLER. Go ahead. I don't wish to look at it. I will accept it if that is what it is.

By Mr. WRIGHT:

Q. These figures I have just referred to are the figures which were submitted, I believe, by Columbia in connection with the Department of Justice review of the transaction prior to the filing of this suit. I will ask you to look at those figures for the first six months of 1946 that are listed there and ask you if upon looking at those you can tell whether or not Consolidated is the largest consumer of the plates and structural steel shapes of your company on the Pacific Coast?

A. Of course, you are confining this questionnaire to purchasers and shipments to the Pacific Coast.

224—650 Q. No; I think this is limited to the—

A. To the Pacific Coast.

Q. Well, the statement at the top says "The 20 largest steel fabricators on the Pacific Coast who are potential purchasers of steel."

A. That is right, but I point out to you that Geneva is shipping steel to other fabricators, other than those on the Pacific Coast.

Mr. WRIGHT. I think it may be simpler if we simply offer this. There is no objection, I take it, to the admission of this answer to question No. 11 in evidence?

Mr. MILLER. That is one of the interrogatories?

Mr. WRIGHT. No; this is the questionnaire.

Mr. MILLER. If we have ever given you that information we stand by it.

Mr. WRIGHT. I think you can tell by looking at it. We will have this marked, then, as the next plaintiff's exhibit.

(Statement referred to headed "The 20 Largest Steel Fabricators on the Pacific Coast Who Are Potential Purchasers of Steel" was received in evidence and marked "Plaintiff's Exhibit No. 28.")

224—651

By Mr. WRIGHT:

Q. Now, I will ask you, Mr. Fairless, to examine this Plaintiff's Exhibit 28 and tell me, if you can, whether the figures that are shown there for these tonnages for the first 6 months of

1946 would, in your opinion, fairly reflect the relative positions of those companies in the first 6 months of 1947.

A. No. I am certainly in no position to project shipments on production of fabricators in the first 6 months of 1946 to the first 6 months of 1947.

Mr. MILLER. Tell him why.

The WITNESS. Well, because I don't know what the business conditions will be in 1947. I wish I did.

Q. I understand that you would not be able to project tonnages for individual companies. I just wondered if you could tell us generally whether, in your opinion, there had been any changes in the situation set forth there as to relative sizes of these consumers if you took the first 6 months of 1947 instead of the first 6 months of 1946 that are recorded there.

The COURT. Could that be anything but conjectural? These figures, I understand, were given for the first 6 months of 1946.

Mr. WRIGHT. Yes.

The COURT. You are asking for the same percentages 224-652 or the same ratio that would exist a year later?

Mr. WRIGHT. I want to find out whether there have been any significant changes. I assume the period is too recent to get accurate figures. I wanted the next best thing in trying to bring it down to date and get the best informed guess. Admittedly it is a guess. If he can give it, all right; if not, he can't.

A. I don't care to guess on the witness stand.

Q. You have no estimate that you can make?

A. No guess.

Q. As I understood you, Mr. Fairless, as you sit there on the stand you would not be able to give us any estimate at all of the proportion of the rolled steel production at Geneva there that went to the various subsidiaries of the Steel Corporation during this period you have been operating?

A. To the subsidiaries of the Steel Corporation?

Q. Yes.

A. The Geneva Steel?

Q. The proportion of the Geneva production that went to the subsidiaries.

A. Very small.

Q. Do you have any estimate on what it would be at all?

A. I would say certainly not more than 5,000 or 6,000 tons a month.

224-653 Q. Do you have any figures? I suppose you do have figures which would be accurate in that respect, haven't you?

A. The organization has. I don't have them.

Q. Those figures would show the amount that went to each of the Steel Corporation's subsidiaries?

A. I would be very happy to furnish them for you.

Q. Would they be readily available, something we can put in tomorrow?

A. I would have to check that. I don't know. That is a pretty big order. There is no objection on our part to furnishing the information.

Q. I assumed you might have running figures which would give the first four months, perhaps, or whatever period was readily available. I didn't mean to suggest that you undertake any particular research. If there are figures readily available which would show the distribution of the Geneva tonnage among all of the subsidiaries of the Corporation, we would like to have them.

A. Would it be helpful to take the full production of Geneva and show exactly what happened to all of it, or confine it to any one particular group?

Q. Yes; that would be even better. I assumed that would be even more of a task. All I was interested in particularly is the extent to which the tonnage went to the Corporation's 224—654 other subsidiaries.

A. We will develop it and see what is available.

The Court. For what period?

Q. That is the period since you began these operations. When was it you said about six months ago that you were actually in a position to operate at 75%?

A. Give me the period for which you want the figures. The first four months of this year?

Mr. WRIGHT. Yes; the first four months. I think that is all.

Redirect examination by Mr. MILLER:

Q. Counsel has asked you if your bid for Geneva was not a quarter of its construction costs. Geneva was built during the war?

A. That is right.

Q. Did the cost of construction have anything to do with the present value of the plant?

A. Oh, my, yes. Oh, yes. Not only the cost, the normal cost of construction, but also the location.

What really happened, your Honor, and properly so, at the request of the Government we went out in the desert out in Utah and built a steel plant and it meant transporting labor of all kinds and materials because there never had been 224—655 undertaken in that locality any construction project even comparable.

By the Court:

Q. You mean it was built regardless of cost?

A. Yes; and it was located irrespective of what it might cost to build the plant there.

By Mr. MILLER:

Q. Now, since the question has been raised, I will ask you to tell the Court on what basis you determined the amount you would bid for that property.

A. We arrived at the amount we were willing to offer not knowing, of course, whether it would be acceptable or not, on the basis of what would constitute a fair return, not for one year or for six months, but for a decade, a 10-year operation, and we took into consideration our capital invested on the basis of our bid, which would represent our then capital invested.

We took into consideration the actual markets for the products before the war and projected those to the best of our knowledge, the knowledge of our experts, the market research.

We took into consideration other facilities that had been built in the area, and we took into consideration all the existing capacity,

what we would consider as a fair participation in the 224-656 anticipated markets and what would be a fair return, not an exorbitant return, but a fair return on the investment, and that was the basis on which our bid was made up.

Q. And did you have careful engineering estimates made of the capital cost on any basis of probably consumption to justify a reasonable return, do you remember? Don't you remember that you had engineering estimates made by Mr. Marshall?

A. Yes; that is what I just finished saying. We had just that done.

Q. Did you take the highest estimate that any engineer was willing to give, any of the engineers employed by you, was willing to give as the highest amount on which any reasonable return could be made?

A. Well, I can't answer that.

Q. Don't you remember Mr. Marshall made—

A. I would like to elaborate, Governor. I don't want to say that my final bid was the highest that anybody mentioned. I really don't know. I know it wasn't the lowest that was mentioned.

Q. Some of them thought you couldn't afford to pay anything for it?

A. That is right.

Q. But don't you recall that Mr. Marshall—you know who Mr. Marshall is that I am talking about?

224-657 A. I do.

Mr. WRIGHT. If the Court please, I don't see the materiality of this.

Mr. MILLER. It is only because of the insinuation and inuendo in counsel's question.

Mr. WRIGHT. There is no suggestion in any question that I asked him that he paid more or less than what he thought was the right price for that plant, giving due consideration—

Mr. MILLER. If you didn't mean any inuendo to be drawn from your questions, then I will not pursue the subject any further.

Q. Just one other thing. Counsel has asked you about your present operations. You are actually shipping steel from Geneva to Pittsburgh?

A. That is right.

Q. I ask you if your present operations are any indication at all as to what Geneva can do in normal times.

A. Not in my opinion.

Q. Will you explain to his Honor a little more fully? He doesn't know as much about the steel business as you do. Now, will you explain to him—that is, I assume he doesn't—will you explain to him how it happened that you have this present situation wherein Geneva is operating as fully as it can be considering the physical situation there although you 224—658 were scratching around to see where you could possibly find enough backlog to even operate it at a break-even point? Will you kindly explain that to his Honor so that he will understand it?

A. Well, your Honor, conditions that prevail at Geneva likewise prevail throughout the steel industry. The demand for steel today is greater than the ability to produce, whether it be at Geneva or Pittsburgh, Pennsylvania, or Sparrows Point or wherever it is, and that is in spite of the fact that we have capacity-wise approximately 10,000,000 more tons of capacity in our industry than we had in 1939.

The reasons for it, it seems to me, are perfectly obvious. We have had a war in which the normal replacements and maintenance were prohibitive, with the result that everything that requires steel is in need of repair or replacement, and also we have a large consuming public, we have large savings, and in addition to that we have a world that was torn by strife and reduced to rubble in many respects.

So it all adds up that there is existing today the most extraordinary peace requirement for steel that has existed in my 33 years in the business. However, it certainly does not represent any peace time rate of operation or demand for steel.

As further evidence, Your Honor, I would like to cite you this figure, if I am not taking up too much time.

224—659 (A discussion was had off the record.)

The Court. We will adjourn court until tomorrow morning at 10 o'clock.

(At this point the hearing was adjourned to Friday, June 20, 1947, at ten o'clock a. m.)

224-661-662 Friday, June 20, 1947, ten o'clock a. m.

Present: As before noted.

MR. MILLER. Mr. Fairless was on the witness stand. He was about to make another observation when we adjourned, but we are quite satisfied with his evidence as it stands and we will not call him back to the stand unless counsel wants to.

MR. WRIGHT. Yes, I did have some re-cross on redirect.

BENJAMIN F. FAIRLESS (resumed).

Re-cross-examination by Mr. WRIGHT:

Q. Mr. Fairless, this mimeographed table entitled "Geneva Steel Company Shipments of Iron and Steel Products, January to April, 1947, inclusive, Net Tons," is a table that you prepared or had prepared in response to the request we made yesterday in the course of your cross-examination?

A. It is.

224-663 MR. WRIGHT. That table I will ask to have marked with the next plaintiff's exhibit number, and we will offer it in evidence.

(Table entitled "Geneva Steel Company Shipments of Iron and Steel Products, January to April, 1947, inclusive, Net Tons," is received in evidence and marked "Plaintiff's Exhibit 29.")

Q. The table shows, does it not, that the guess you made yesterday as to the approximate proportion of the Geneva tonnage that was going to other U. S. subsidiaries was about right; isn't that right?

A. I said between five and 6,000 tons a month actual shipments was slightly in excess of 19,000 for a four-month period.

Q. Yes.

A. That material, however, is for further processing by the subsidiaries involved and will, of course, be shipped as a finished product to customers.

Q. Yes, I understand that all of the product shown on the table ultimately goes to customers of some subsidiary of the Steel Corporation in finished form.

A. Not for consumption within the subsidiary.

MR. MILLER. With a very small tonnage here for consumption. The figure is on the right hand side, you will notice.

224—664

By Mr. WRIGHT:

Q. Now, I think you gave some testimony as you were finishing last night about this consumption estimate, how in your opinion your demand estimates, this present extremely high demand you do not regard as any index of normal peacetime demand?

A. I do not.

Q. That whole question of what the future demand for steel may or may not be is one about which there is a great difference of opinion among people in the industry and economists in general, is it not?

A. That is true.

Q. There are no very reliable criteria from which you could actually predict the demand for steel products at any future date; is that correct?

A. Except by a review of what has happened in the past.

Q. Yes. Well, the review of what happened in the past has frequently been a very poor guide to determining what happens in the future; isn't that right?

A. One of the factors, however, in considering the future.

Q. Do you remember during the prewar years there many of the industry estimates as to what the war demand would be based on past experience were quite inadequate, were they not?

A. Well, naturally I was a member of the Advisory Committee on Steel to the War Production Board, and in the beginning we had no idea as to the extent of the war, and obviously we could not accurately foresee the actual demands for steel.

Q. Yes; that is what I was pointing out. I say your estimates at that time of what you thought the war demand would be based on all of your past experience were far below what the actual war demand proved to be; isn't that correct?

A. Our approach was really not on the basis that you have indicated. Our approach was rather on our ability to produce rather than to forecast what the requirements of steel for war purposes might be.

Q. Well, I take it in connection with these decisions to build Geneva or decide what to do about increasing capacity that there was an attempt by you and other people in the industry to determine not only what you could do with the existing capacity but what the actual war demand for steel would be; isn't that right; or predict that?

A. The Government did not come to us, and by "us" I mean the steel industry, and ask us to project the steel requirements required to conduct the war. They came to us and said "What is necessary to provide by way of facilities in order to produce a

certain tonnage of plates, for example, or structurals?" Whatever the product might be.

Q. I am not referring so much to any particular negotiations between you and Government agencies. I am referring 224-666 to this entire question of the effort that was made by expert analysts of all kinds within and without the industry to predict what the actual war demand for iron and steel products would be. There was such an effort made, was there not?

A. Made by many agencies.

Q. Not only by agencies of the Government, but by outside engineering sources?

A. That is correct.

224-667 Q. And also by the industry itself?

A. Well, it is not so much by the industry on the basis of what would be required as it was on the basis of what the industry could produce.

Q. I am not referring to that. I am talking now about a demand estimate.

A. I can't recall the steel industry ever having made any estimate as to what the requirements would be.

Q. Regardless of who made them, the estimates that were made for the most part fell far short of anticipating what the actual demand became; isn't that correct?

A. I don't think that is a correct statement. I think that the steel industry very well fulfilled their requirements for steel to the proper conduction of the war.

Q. I didn't ask you as to what the steel industry did in fulfilling requirements. What I asked you was whether or not the estimates that were made in order to determine what the war demand for steel products would be, those which were made before the war, were adequate to show what the demand in fact turned out to be.

A. I can't answer your question because I don't know what estimates you refer to.

Q. Well, in any event, I take it, this whole business of estimating demand is really a matter which goes far beyond the confines of just steel operation. That involves a 224-668 consideration of the whole economy and what is going to happen to it; does it not?

A. That is true.

Q. But you know from past experience, that is, over a 50-year period, there has been a constant increase in the demand for steel over that period, has there not?

A. That is true, yes.

Q. And any assumption that the country is going to progress economically at all necessarily rests on an assumption that there

will be an increasing demand for steel products; isn't that right?

A. Definitely.

The COURT. An increase over what, Mr. Wright? Over the present or over the past?

Mr. WRIGHT. A constant progressive increase.

The COURT. Over the present?

Q. Can you give the answer? What would you say as to the present? In your opinion, has the economy reached a state now where it never going to be any larger in terms of steel demand?

A. Well, I am willing to guess with you, if you care to have my guess. We have a capacity now in steel approximately 40,000,000 tons more than existed in 1939.

Now, the present demand for steel is in excess of that capacity to furnish, but in my judgment that is a temporary and a very much swollen demand caused by the war and the aftermath of the war.

Now, when we really get back to our peacetime economy, which, of course, we haven't reached yet, in my judgment the present capacity will be sufficient to take care of the requirements for a period.

Q. How long, of course, is impossible to even estimate?

A. It is impossible for me to estimate.

Q. On this question now of the distribution of your present tonnage, that is, in an effort to satisfy the present demand, which is, I understand it, far in excess of current capacity, how do you in general determine who gets the steel?

A. We have, in our subsidiary companies, a system of allocation. It is elastic to some extent, but obviously when you have a demand for steel in excess of your ability to produce, then you must develop some means of distributing your production adequately and fairly, and that we have attempted to do.

We take our customers of the past and we allocate our current production based on their requirements, on their past requirements, plus whatever increase in production we are able to attain.

Now, that doesn't mean, however, that we completely exclude people who weren't on our books as customers in the past, and there is where our system of allocation is elastic.

224-670 Q. In other words—

Mr. MILLER. Let him finish, please.

Q. Go ahead:

A. Also we are still under directives from Government. We are under directive to furnish certain products for export. Tin plate is an excellent example, where Government tells us, through

directives, how much of our production to ship into the export markets.

Likewise, we have been under directives to ship certain quantities of steel for the building of homes, home construction; likewise for steel required to build railroad cars and power units to support our transportation systems.

Q. Is that all your answer?

A. That is right.

Q. In any event, the great bulk of your tonnage is today allocated by you rather than by the Government; isn't that correct?

A. The great bulk, yes.

Q. Now, as to the question of whether or not the operation of those Geneva facilities is going to attract new independent steel consuming enterprises into the area it serves, that question depends, does it not, on the ability of those people to actually acquire steel rather than on the question of whether or not Geneva is operating at capacity; isn't that correct?

224-671 A. Would you repeat your question, please?

Mr. WRIGHT. Would you read it?

(The last question was read by the reporter as follows):

"Question: Now, as to the question of whether or not the operation of those Geneva facilities is going to attract new independent steel consuming enterprises into the area it serves, that question depends, does it not, on the ability of those people to actually acquire steel rather than on the question of whether or not Geneva is operating at capacity; isn't that correct?"

A. It is quite a complicated question.

224-672 Q. Can you answer it? If you can answer it go ahead. If you can't we will go on to another question.

A. I want to answer it.

Mr. MILLER. Answer it.

Q. Go ahead.

A. I want to make certain I understand the question. Obviously there would be no point in a fabricator of steel locating his plant in the West unless he was assured of a supply of steel irrespective of whether that steel came from Geneva or from some other source.

Q. Yes; and the fact that Geneva is operated at capacity gives no such assurance at all, does it?

A. Number one, Geneva is not operating at capacity; and secondly, as I have attempted to explain, we are going through a period of very much inflated demand for steel.

Q. Well, I take it the only circumstances in which capacity operation of Geneva would tend to encourage steel consuming independent facilities to come into the area would be where the capacity was in excess of the demands; isn't that right?

A. Or equal to the demand.

Q. Well, if it were equal to there would be no particular—anybody who came in would find himself competing with others already there for the supply of steel that was not sufficient to go around; isn't that right?

224—673 A. I repeat there would be no point in any fabricator going to the West or creating facilities in the West unless he was assured of his steel; but Geneva, however, is not the only producer of steel in the West. It is not all dependent upon Geneva.

Q. No. There are other producers in the area there, Bethlehem and Kaiser?

A. That is right.

Q. And the question of whether or not the fabricators would be encouraged to come in or not would then be primarily dependent on whether or not they could get steel either from Geneva or some other plant that would serve them economically?

A. True. Some, however, are apparently willing to take that chance because they are beginning to locate, secure property, and create facilities; so they apparently feel quite confident of the supply of steel.

Q. Are you familiar with the statement that Mr. Mathesius, the President of the Geneva Steel Company, made to this business group in Idaho in May that was reported in the "Iron Age" issue of May 8?

A. I do not know.

Q. You don't know anything about that?

A. Well, I may. I would have to know what the statement is.

Q. Let me show it to you.

224—674 Mr. MORRIS. What year is it?

Mr. WRIGHT. This is the issue of May 8, 1947.

A. What particular thing?

Q. I am calling your attention to the quoted statement which begins down here "Statement of Mr. Mathesius before a business group in Boise, Idaho, last week, when he said \* \* \*" and if you will read what he said up at the top of the page—

A. I was not familiar with this statement, but there isn't anything that I have read that I take any exception to.

Q. So that when he said or explained to these businessmen why there had not been an influx of fabricating plants into the inter-Mountain area; that for the near future the continuing steel shortage not only in the Western market but in the steel markets generally will act as a definite deterrent to the establishment of fabricating plants in the inter-Mountain area and that the steel shortage would not only affect the ability of a company to obtain

steel for the erection of plants and the acquisition of equipment, but it would also seriously impede that company's ability to obtain steel stocks for use of its fabricating operations, he was simply giving them the cold, hard facts about the present picture there to which you subscribe; isn't that correct?

A. That same statement would equally apply to all other parts of the country.

Q. Did I ask you in reference to the table as to what 224-675 proportion of those shipments there you estimate would have gone to Consolidated?

A. I do not have that break-down. Mr. Roach is here and he would be the proper individual to testify as to the amount of steel he is receiving currently from Geneva.

Q. Maybe we had better ask him about that.

A. And it is perfectly proper for him to give you the information.

Mr. WRIGHT. That is all.

Redirect examination by Mr. MILLER:

Q. Do you happen to know, Mr. Fairless, of particular consumers of steel who are now making plans to locate plants in this area we are talking about because the Geneva Steel Company is there?

A. I do.

Q. You can inform the Government of them if counsel wants to know.

A. I would be very happy to.

Mr. MILLER. That is all.

Mr. ALFRED WRIGHT. If your Honor please, I stated late yesterday that Mr. Roach wanted to clear up one or two 224-676 questions in connection with his testimony, and I would like to call him for that purpose.

ALDEN G. ROACH, recalled as a witness on behalf of the defendants, having previously been sworn, testified as follows:

Direct examination by Mr. ALFRED WRIGHT:

Q. Mr. Roach, in your testimony yesterday afternoon you made a statement with regard to boiler business in which the Consolidated Steel Corporation was engaged. Do you desire to correct or amplify any portion of your statement at this time?

A. Yes, sir; I do.

Q. Will you do so, please?

A. Your Honor, I made the statement in my testimony yesterday that we went out of the boiler business in—I have forgotten the exact years—1931, 1932, or 1933.

Q. Those are the years.

A. Those are the years? And then later in my testimony I said that we, meaning Western Pipe and Steel, had done a war job on Scotch Marine Boilers for Liberty Ships. Both of those statements are true, but they need some explanation.

224-677 When I speak of I am prone to think—because I am president of Consolidated and we have just recently acquired Western Pipe & Steel Company in 1945—I am prone to think of the activities of Consolidated Steel. So, in my first statement, there would be inferred therefrom that we never did any boiler business from that point on. Western Pipe & Steel did this war job on Scotch Marine Boilers.

By the Court:

Q. When did you acquire Western Pipe & Steel?

A. In December 1945. Then in our classifications of products there appears an item of boilers and tube stills and some other miscellaneous things.

By Mr. ALFRED WRIGHT:

Q. Excuse me, Mr. Roach. That is designated, however, in your answers to the interrogatories only as "Boilers," is it not, the entire classification?

Mr. WRIGHT. Maybe we can save time by having the actual answer copied into the record, if that is agreeable to you.

Mr. ALFRED WRIGHT. I am not talking about the answers there.

Q. What I am asking you, Mr. Roach, is whether or not the classification which includes "Boilers, Superheaters," and then other equipment is to be included in that classification. 224-678 tion, is designated by your answers to the interrogatories as only "Boilers"?

A. As I recall it, it is, but under that classification there are the other products that we have worked on sporadically. They aren't standard products. We worked on plans and specifications.

Now, during the years 1937 and 1938 there was some work reported as completed, some \$57,000 or \$58,000 worth of work reported under that classification.

Now, if a company has ever been in the boiler business, which we were in the early 30's, their installations are subject to repair work; and the same as we were at one time in the elevator business. Occasionally we get a call, very, very seldom, to do some sort of field repair work.

We sold our elevator business in the early 30's to another company, but we still occasionally get some work there in the field, not in the shops, of that type work.

Q. That work is classified under the classification of "Boilers" in your answers to the interrogatories; is that correct?

A. The class of work that I mentioned of 1937 and 1938?

Q. Yes.

A. Yes; it is.

Q. Mr. Roach, are you familiar generally with the type of product that is sold by United States Steel Products Company, formerly Boyle Manufacturing Company?

A. Yes; I am, in general.

Q. Does Consolidated produce or sell any products of those classes or types?

Mr. WRIGHT. I object to that. He can say what the products he sold were that he is talking about, or what the products of Boyle were that Boyle sold if he knows.

The COURT. As I understand it, he is saying he does know, and knows what their product is, and he doesn't sell any of their product.

Mr. WRIGHT. I thought it was a qualification competitively.

The COURT. No; that was carefully avoided.

Mr. WRIGHT. May I hear the question?

(The question was read by the reporter.)

Mr. WRIGHT. What classes or types are being referred to? Will you read the previous question?

(The previous question was read by the reporter as follows:)

"Question. Mr. Roach, you are familiar generally with the type of product that is sold by United States Steel Products Company, formerly Boyle Manufacturing Company?"

Mr. ALFRED. Will you read the last question?

(The reporter read the last question as follows:)

224-680 "Question. Does Consolidated produce or sell any products of those classes or types?"

A. No.

Q. From your experience, Mr. Roach, in the steel fabricating business; will you state the essential differences to the court between a structural fabricating plant and a plate fabricating plant?

A. Yes, sir.

Mr. WRIGHT. Is this supposed to be redirect?

Mr. ALFRED WRIGHT. I am recalling him to ask this question.

The COURT. May I have that question?

(The last question was read by the reporter.)

A. There is a fundamental difference in that the structural fabricating plant represents the structural steel fabricating industry, and a plate fabricating plant represents the plate fabricating industry in its method of manufacture and end products that it produces.

Now, I listened to, the other day, on examination of testimony, to a considerable lengthy discussion of this problem and I heard

thrown in there inferentially that because there were some plates used in a structural plant and perhaps some rolled structural shapes, structural material used in a plate plant, that perhaps the structural fabricator or the plate fabricator could  
 224—681 do one or the other competitively and successfully.

That was the inference, if not said.

Now, the facts of the matter are, that if, in my opinion, and I feel qualified to state them because we are in both the structural fabricating business and the plate fabricating business, these:

The plant of a structural fabricator produces structural steel products such as bridges, buildings, building frames, and structural frames of all kinds.

Now, to say that there is no plate work used in a structural fabricating plant would be making a misstatement. There is plate used in a structural fabricating plant. Plate is a good structural material and makes up a part of structures of various kinds for steel frames on office buildings or hotels.

The method of installing earthquake bracing in the West or fastening the beams of columns together is by the use of gusset plates, small plates, that are cut and punched and the members riveted to them or vice versa.

Probably the largest use of plates in a structural plant is in connection with a built-up girder, plate girder, so-called. You see plate girders on railroad bridges. If, for instance, there were a balcony of a theatre, a long balcony of a theatre, to support, you could not find a rolled section deep enough—a wide flanged section would probably be used, if possible—you couldn't find one deep enough and strong enough rolled by any mill to  
 224—682 carry the load imposed, depending upon the span. There are certain limits in span and load.

As far as the rolled section you heard, your Honor, that the heaviest rolled section is 36 inches. That 36-inch beam comes in various weights, but if we go up to a girder, we will say, 42 inches deep or 96 inches deep, such as you see on the Pennsylvania Railroad up here, or you would see under a balcony in a theatre, if it were made out of plate girders, that would have to be made out of a web plate and structural rolled angles and covered plates on top all riveted together. Those plates are flat, they are either punched or drilled, they are either torch cut or sheared, and they are all assembled together in a girder; a piece of structural material, not a plate shop product at all.

As far as your tools are concerned, the tools in a structural plant are entirely different, in the main, than they are in a plate plant. There are some common tools in order to drill or punch these plates for the plate girder. There are gang drills or indi-

vidual drills or punches, and there are some of those same tools that are in a plate shop for doing some drilling and punching on a plate to be used in plate products; so that there are those common things.

Obviously there are overhead traveling cranes in both plants, but plate flows into a plate plant and is  
224—683 manufactured into plate products and sold as the plate industry sells them. Pressure vessels, containers of all kinds and structural steel flows through, and plate is a structural material, flows through the structural plant and comes out as a structural product.

We, of Consolidated, are now, particularly since the acquisition of Western Pipe & Steel Company, are primarily—the majority of our business is the plate business and the minority of our business is the structural steel business.

Q. Can that plate business be carried on and can the products be made with the tools and machinery and facilities that you have in your structural plant?

A. They cannot, sir.

Mr. ALFRED WRIGHT. That is all.

224—684 Cross-examination by Mr. WRIGHT:

Q. Mr. Roach, I think we had requested either you or one of your men here some days ago to see if you could give us the actual booking figures for the rest of the year 1946 to supplement the figure for the first eight months which you gave us in your answer to interrogatories. Were you able to get that figure?

A. As I recall, the figure that was given, if my memory serves me, for the first eight months of 1946 was 27,000 tons.

Q. Something like that; yes.

A. From figures I have seen by those delegated to do that work it appears that bookings are 37,000 tons, approximately. We have the exact figure, I think, in the room.

Q. Have you got the figure?

A. Yes.

Q. All I want to do is just put the actual figure into the record if you have it.

A. As I recall the shipments for that year, however—there is a great difference, your Honor, between bookings and shipments, because you might book all your business for two years in one month of the year but not run it out in that year. That is not probably what would happen, but it might happen. Our shipments were around 20,000 tons. That is to the best of my memory,

224—685 Q. But the figure that is comparable to the interrogatory figures that you furnished is the 37,000 tons?

A. I think that is correct.

Mr. ALFRED WRIGHT. What interrogatory figures, Mr. Wright?

Mr. WRIGHT. The interrogatory figure of 27,000 tons for the first eight months of 1946.

By Mr. WRIGHT:

Q. The wide difference between bookings and shipments occur, I suppose, in times of rising business or falling business; isn't that generally true?

A. In times of rising business or falling business? I don't understand you.

Q. If your business is increasing your bookings tend to run ahead of your shipments; isn't that right?

A. That could possibly be the case.

Q. And if your business is decreasing then your shipments tend to run ahead of your bookings?

A. Business might be decreasing and we would be fortunate enough to get some large project which would show a very large booking and be carried on for a considerable length of time.

Q. But in general what I said is true, is it not, that when your business is increasing your bookings will run ahead of your shipments, and when it is decreasing the bookings will run behind?

A. Not necessarily so.

Q. I say in general isn't that correct?

A. I say not necessarily so.

Q. Can you answer the question?

A. The answer to your question is no.

Q. What are the circumstances, then, that in general would cause your bookings to run ahead of your shipments?

A. Our business is a very peculiar business, Mr. Wright, in that we have to rely on projects. We make nothing for the trade. We make nothing for stock for the trade and we can't analyze the future. We depend upon public projects and upon the desires of some owner to build an office building, and we don't know when that is going to come along. Our bookings may come at any time in considerable capacity.

Q. The sequence of time is, is it not, that the shipment of material follows the booking of the contract; isn't that correct?

A. That is correct.

Q. And there may be a lapse of time there in the time required to fill the contract of how long a period?

A. You can't tell anything about the relationship of that, because what might happen is that we are delayed in shipment or we are delayed in the receipt of materials. We may or may not

get bookings during that period. You just can't tie  
224-687 those two things together.

Q. All you are sure of is the period of time within which you ship the material will follow the period of time in which you book it?

A. I am sure of that.

The COURT: Doesn't that only mean that you don't deliver before you get the order?

Mr. WRIGHT: That seems to me fairly obvious.

Q. And I should also think as a fairly obvious consequence of that that in general when your orders are coming in at a rapid rate your shipments would tend to lag behind your bookings; and in general when your orders were lagging your shipments would tend to run ahead of your bookings? You, Mr. Witness, I understand, say that is incorrect? Is that right? Is that your position on that matter?

A. You will have to go over that again, because I thought you were addressing yourself to his Honor. If that is a question to me, repeat it.

Q. I had already addressed myself to you once on it.

A. I thought I answered the question.

Q. I am sure we understand each other. I will try it again. It is true, is it not, that at a time when your orders or bookings are falling off your shipments will tend for such a period to be greater than your bookings?

A. That has not necessarily been our experience,  
224-688 Mr. Wright. That is a question that you cannot answer categorically. It is an indefinite proposition.

Q. You can't answer it categorically even in the generality in which I put it?

Mr. ALFRED WRIGHT: If the Court please, that question has been asked and answered at least four times, and I object to it.

The COURT: I think if Mr. Wright doesn't feel he has a complete answer—

Mr. ALFRED WRIGHT: I am sure he doesn't feel that way.

The COURT: Then we are going to satisfy him if we can.

By Mr. WRIGHT:

Q. Let us take the specific example of one year where the first six months of the period your bookings were low and the last six months of the period your bookings were high. For the last six months of that year your booking figure would run ahead of your shipment figure, would it not?

A. We are right on the same question, Mr. Wright, I am afraid.

Q. You can answer that question yes or no.

A. I don't know.

Q. On this question of the amount of the Geneva product that you consume in all of your plants, I show you Plaintiffs' Exhibit 29 which shows the shipments of Geneva for the first 224—689 four months of the year for customers other than subsidiaries of about 260,000 tons; isn't that right?

A. I don't know.

Q. Do you know how much of that total went to your plants?

The COURT. That was for the first three months of this year, was it not?

Mr. WRIGHT. That I think was for the first four months. Doesn't the table say so?

The WITNESS. This is January to April 1947.

The COURT. Is that inclusive?

Mr. MILLER. Yes.

The WITNESS. It is to customers on blooms and large billets, plates, slabs, small billets and light slabs, sheared plates and structural shapes, pig iron, forty-eight thousand and forty-nine, making a total of—

The COURT. Your question is, Mr. Wright, how much of that went to Consolidated?

Mr. WRIGHT. Yes.

By the COURT:

Q. You can answer that if you know.

A. I don't have the breakdown. I would be perfectly willing—this is January to April 1947. I don't have the figures. I can develop those figures for you if you want me to or I can tell you approximately what I think.

224—690 By Mr. ALFRED WRIGHT:

Q. State what you think would be the approximate figure.

A. Of course, we order our materials from Columbia Steel Company.

By Mr. WRIGHT:

Q. Yes; I understand that.

A. So we look to Columbia to get our material, and they furnish part of the material from Torrence or they may furnish part of it from Geneva.

Q. I suppose your records show the mill from which it is shipped, don't they?

A. That is right, we would know.

Q. That is, when you get a shipment from Geneva it so appears?

A. That is right; but I haven't collected that information accurately, but I think it will serve your purposes probably, and

Your Honor's, if you make an approximation, and during these months I will say that we received probably ten to fifteen thousand tons during those months per month.

Q. About ten to fifteen thousand tons per month?

A. Two classifications, plates and structural shapes. Structural shapes of a small quantity.

Q. There was some testimony here about this Trans-Arabian pipe line that was referred to, I think, as a job under which you contracted to furnish about 275,000 tons of pipe; is 224-691 that the correct figure?

A. About 230,000.

Q. About 230,000 tons of pipe?

A. Yes.

Q. To make that much pipe how many tons of plates do you use?

A. Well, we will use approximately two hundred and fifteen to two hundred and twenty thousand tons of plates. We will use more than that. We will use approximately 225,000 tons of plates.

Q. To make how many tons of pipe?

A. About 230,000 tons.

Q. It would take less tonnage of plates? You lose part of the plate in the process of fabricating the pipe, don't you?

A. We shear the edges of the plates to square them up and we trim the edges of the plates with a groove to prepare it for welding, and in those operations we lose some of the steel, and in the operation itself we spoil some of the pipe.

By the Court:

Q. I thought you were going the other way. I thought you said that you took less plate to make a greater amount of pipe.

A. No, I misunderstood his question if he said that.

By Mr. Wright:

224-692 Q. What I was trying to get at was the tonnage of plate you require to make the 230,000 tons of pipe that you contracted to deliver.

A. Well, I think I answered it incorrectly. What I was trying to say there was that we lose some of the tonnage. We lose some of the weight in the fabrication of the pipe. I think I answered it incorrectly probably, and the 230,000 tons of plate received—

By the Court:

Q. He was asking about 230,000 tons of pipe.

A. Well, in stating the 230,000 tons, Mr. Wright, those are the plates, that come from Geneva. That is the way it is measured.

224-693 By Mr. WRIGHT:

Q. That figure is a figure then which represents not the actual tonnage of the finished pipe, but the tonnage of the plate that you use in fabricating the pipe?

A. I think probably I wasn't very clear in my description of it.

Q. You haven't started to, or at the time those figures on the table were recorded, you hadn't started to fabricate that pipe; is that correct?

A. That is correct.

Q. So that none of that tonnage is reflected in these figures that you gave us as to what you had gotten from Geneva during that period?

A. None of the tonnage of the Trans-Arabian pipe line?

Q. Yes.

A. No; we don't start the Trans-Arabian pipe line until October of this year. However, we were building a 30-inch line which, incidentally, the Tube Company doesn't manufacture. They don't make 30-inch pipe.

Q. That was for another pipe line?

A. For the Southern Counties and Southern California gas line, which initiated us into this business.

Q. You were asked about the U. S. Steel Products Company.

Can you give us a list of the products that they make?

224-694 A. I don't have a list in front of me.

Q. Well, do you know?

A. Yes, oil drums and garbage cans, washtubs, garden tools, and miscellaneous containers of that type, all of which business we aren't in.

Q. Miscellaneous containers of what type?

A. Buckets.

Q. The miscellaneous containers that you make are what?

A. We don't make any miscellaneous containers of that type at all; in fact, I don't know of any miscellaneous containers we make unless you were to say that a butane or a propane tank was a miscellaneous container, or an underground storage tank or a field-erected storage tank for the oil industry was a container.

Q. Do you know whether they make underground storage tanks or not?

A. They don't.

Q. At the present time? Do you know when they stopped making them?

A. They stopped making them a number of years ago. The exact year I don't know.

Q. Aren't you familiar with that?

A. No.

Mr. WRIGHT. Well, in order to avoid any confusion about this questionnaire answer which was referred to yesterday in my examination of Mr. Roach which I didn't offer—

Mr. MILLER. I can't hear what you are saying, counsel.

Mr. WRIGHT. I would like to have the answer to the questionnaire, the Justice Department questionnaire about which I questioned Mr. Roach yesterday, actually copied into the record in its entirety so there will be no question as to what he was referring to at the time he was questioned; and I am asking the reporter now, if there is no objection, to copy this question 4 in its entirety, which begins on page 3 and goes over to the middle of page 4.

Mr. ALFRED WRIGHT. No objection.

(The Question 4 referred to reads as follows:)

"QUESTION 4

List of all subsidiaries and list of all products manufactured by Consolidated and its subsidiaries.

ANSWER

List of all Subsidiaries of Consolidated Steel Corporation

A. Owned 100%: Western Pipe & Steel Company of California, The Steel Tank & Pipe Company of California, Consolidated Steel Corporation of Texas, Philippine Consolidated Steel Corporation.

B. Owned 50%: Western Tank Car Company, Consolidated Shipyards, Inc., Consolidated Ship and Drydock Company; Consolidated Constructors, Inc., Consolidated Western Constructors, Inc., and Union Constructors, Inc., (owned 20% by Consolidated Western Contractors, Inc.), also subsidiaries, are not present engaged in any actual operations and have only a nominal amount of assets and liabilities.

"Neither Consolidated nor any of its subsidiaries is engaged in the repetitive mass production manufacture of identical stock products, except for certain types of culvert pipe. All jobs are obtained as a result of competitive bidding or separate negotiation. Such corporations are therefore, in a sense, general contractors in the steel fabricating business. For purpose of illus-

tration, there are listed below some of the principal types of products which such corporations are equipped to fabricate:

### Principal Products

Accessories, Railroad; Agitators; Air Pre-Heaters (Plate & Tubular); A. P. I. Oil Storage Tanks, all sizes; Barges of all kinds; Bins, Steel, all kinds; Boilers, various kinds; 224—697 Bolted tanks; Bridges, Structural Steel; Buildings, Structural Steel; Caisons; Cableways; Cars, Tank; Cement Mfg. Machinery; Coal Pulverizing Equipment; Cracking Stills; Culvert Pipe; Derricks, Steel; Dragline Buckets; Economizers, Fuel; Erection Equipment, all kinds; Expansion Joints; Flanging & Dishing, all kinds; Floating Pontoon Decks; Flumes, Steel; Gas Holders; Gates; Slide, Drum, Tainter, Bulkhead; Hemispherical bottom Tanks & Towers; Hulls, 224—698 Dredge; Joists, trussed steel & Rolled; Kilns, rotary; Machine shop job work; Machinery (heavy); Sugar mill, Operating mechanisms, all kinds, Mining; Mill Buildings; Oil Refinery Equipment; Penstocks; Pipe, welded and riveted; Pipelines and Appurtenances; Plate work, all kinds; Portable Buildings; Pressure Vessels; Process Buildings & Equipment; Smoke Stacks, Steel; Sprinkler Tanks; Standpipes; Steel forms for Concrete; Storage Tanks, welded & riveted; Towers; Absorption, Fractionating, Radio, Transmission; 224—699 Truck Tanks; Tunnel liners, Steel; Valves: Butterfly, Gate, Needle, Sphere; Welding; Well casing.

"Both Consolidated and Western Pipe & Steel Company were extensively engaged in shipbuilding and ship repair work during the wartime period but are no longer engaged in such work, except for the completion of two government contracts."

Q. Who are the other principal welded pipe manufacturers besides yourself, if you can tell us?

A. Well—

The COURT. You mean in that district?

Mr. WRIGHT. In the country.

The COURT. In the whole country.

A. (Continuing.) A. O. Smith is the largest of course, at Milwaukee, and in welded pipe they make probably more welded pipe than any single or combination of welded pipe manufacturers. On the West Coast we have smaller plate shops that make welded pipe.

224—700 Q. Nobody in the West Coast area, though, who does a volume of business in that work comparable to yours, is there?

A. They don't do work comparable to us in connection with this 30-inch special high manganese expanded yield viewpoint pipe we started to manufacture, on which we spent considerable money for facilities. That type of work they don't make, but the other type of welded pipe they do manufacture.

Q. This 30-inch pipe is the kind A. O. Smith makes?

A. They make pipe of small diameter and they do it on an entirely different basis of manufacture, method of manufacture.

Q. They do use an electric weld process; is that right?

A. It doesn't compare with our type of welding. It is a resistance welding process. Ours is a continuous welding process, fusion process of welding under a submerged arc. By that the electrode goes down under flux and the arc is submerged under the flux. The pipe moves under the welding head and the weld is completed that way.

In the A. O. Smith process they form the pipe first and put it in a very powerful electric resistance welding machine and they simply turn a heavy current on the pipe and keep the edges up to a fusion heat and by pressure the two are forged together.

There isn't any arc welding process at all in any way, 224-701 and on the inside of the pipe, then, is where the upset occurs and that is stripped off to give a smooth appearance on the inside. That operation we don't do either.

Q. Who is there besides yourself and A. O. Smith that do this or make this welded pipe in the larger sizes suitable for oil and gas lines?

A. There are a number of people in the country, in the East, with whom I am not familiar and who don't come out into our territory particularly. There is very little of this work in California, and the work is going downhill so rapidly because of the depletion of the oil supply in California.

On the West Coast there is the Southwest Welding Company, Lacy Welding and Manufacturing Company, the Steel Tank & Pipe of Portland, and two or three other concerns in the northwest that make electric-welded pipe. The Bay Salt Rock Company has gone into the business.

Q. I was referring specifically to pipe of the size that is usable for the large, long oil or gas lines.

A. The 30-inch pipe?

Q. Yes.

A. All these concerns I mentioned make larger pipe than that.

Q. Do they make the 30-inch pipe or the large size pipe in quantities in the sizes suitable for this oil line use?

A. They can make it.

224-702 Q. Are they making and selling it?

A. They can make pipe of the diameter the oil companies want, from 30-inch on up, and they can make pipe that the oil companies will accept if the oil companies, as they have done with us because we have been able to make some pipe for them, will pay the price that they want for the pipe.

Q. But they aren't and haven't engaged in that business; isn't that right? They aren't now engaged in it and haven't engaged in it in the past; is that correct?

A. No; you are wrong. They make pipe and I don't know to whom they sell it. They can make pipe and do make pipe.

Q. Then you don't know whether or not they now are engaged in that business of selling that pipe for use in oil and gas lines or whether they aren't; is that right?

A. I know some of them have sold their pipe to oil companies.

Q. Could you answer the question first?

A. Put your question again.

Mr. WRIGHT. Will you repeat the question?

(The question was read by the Reporter.)

A. Yes, sir; I do.

Q. What is the answer?

A. The answer is yes; Southwest Welding Company, as an example, in Los Angeles.

Q. Southwest Welding Company, you say, is now 224-703 working on a contract for an oil and gas line?

A. I didn't say that.

Q. What are they doing now which causes you to say they are engaged in this business?

A. Southwest Welding Company is a plate fabricator making plate products similar to products that Consolidated makes, including pipe.

Q. Then all you mean by your answer is that they are equipped to engage in that business if the opportunity should be offered; is that correct?

A. Mr. Wright, frankly, you are confusing me, I must admit. Are you asking me whether they have made pipe for the oil companies or are they now engaged in making pipe?

Q. I first asked you whether they were now engaged in the business and I believe your answer was that they were; is that correct?

A. That is correct.

Q. Then I asked you whether or not they were, in fact, engaged and actually making any such pipe for such use, and you said they weren't; is that correct?

Mr. MILLER. I don't think he stated that at all.

The COURT. You asked him if they were working on a particular contract at this time. He said he didn't know.

Mr. WRIGHT. Yes, that you don't know.

224-704 Q. Now, do you know whether or not at the present time they are actively engaged and actually making pipe for that purpose?

A. I know they are in the pipe-manufacturing business, but I don't know whether they have an order for pipe at the moment or not.

Q. Can you answer the question, please?

Mr. MILLER. I submit he has answered the question very distinctly.

The COURT. Of course, I will have him answer any question where the answer isn't clear to you. As I understand the witness, he says they are in the pipe business, but he doesn't know whether the factory is working on pipe at this moment.

Q. Do you know of any specific—

Mr. WRIGHT. There is no question about the fact of their being in the pipe business. What I am trying to get at is whether they are now engaged.

The COURT. You mean this moment?

Mr. WRIGHT. At the present time.

The COURT. By that you mean this moment?

Mr. WRIGHT. Engaged in this type of work.

The COURT. You mean this moment, or that is the nature of the business?

Mr. WRIGHT. Let us take the whole past year.

The COURT. In the past year.

224-705 The WITNESS. Have they engaged?

Q. Have they actually sold pipe of the kind that you are now delivering to pipe lines, to oil or gas companies, for pipe line use?

Mr. MILLER. If you know anything about that.

A. I don't know whether they have delivered any to oil or pipe lines. I do know that they have made some pipe during the last year of the type we are manufacturing in our operations.

Q. That is the extent of your knowledge on that question; is that right? That is all you know?

A. That is all you want to know. I have answered it.

Q. Now, is there any other manufacturer that you know of other than National Tube that makes oil- and gas-line pipe by this seamless process that Mr. McConnor described?

A. Yes; there are two or three. He could better answer that question than I could, but there are J. & L. and Spang and Chalfant.

Q. Those are Eastern concerns?

A. That is right.

Q. Any other?

A. There may be some others, and I refer you to him for that question.

Q. You don't know of any that are on the Coast out there where you are?

224-706 A. No, sir.

Mr. WRIGHT. That is all.

Redirect examination by Mr. ALFRED WRIGHT:

Q. Mr. Roach, the Youngstown Sheet & Tube Company also makes welded pipe, does it not, in the East?

A. Yes, sir.

Mr. ALFRED WRIGHT. That is all.

Mr. WRIGHT. I am sorry, I didn't hear the last question.

(The last question was read by the Reporter.)

Re-cross-examination by Mr. WRIGHT:

Q. Do they make it for use in oil and gas lines?

A. Yes, sir.

Mr. WRIGHT. That is all.

Mr. MILLER. During the examination of Mr. Obbard I had marked for identification three exhibits listing the different fabricators by groups and so forth, and they were marked Defendants' Exhibit 1, 2 and 3 for identification. I want to offer them in evidence.

Mr. WRIGHT. I thought they had been received.

Mr. MILLER. We find that they weren't. I thought so myself. I find they were only marked for identification.

224-707 The COURT. There was some difficulty at the time, and you remember you wanted to examine each one at a time, and Mr. Morris suggested that they be marked for identification at that time. Let them be received in evidence.

(Defendants' Exhibits 1, 2 and 3, previously marked for identification, were received in evidence.)

• Mr. WRIGHT. I thought there was one other piece of unfinished business with him, and that was the question of the exhibit we put in that didn't quite match up to his work sheets there, the abstract.

224-708 NORMAN B. OBBARD, recalled as a witness on behalf of the Defendant, having previously been sworn, testified as follows:

Cross-examination by Mr. WRIGHT:

Q. I will hand you this Plaintiff's Exhibit No. 22, and that, I believe you recall, was the abstract which I questioned you about in connection with the statement in your work sheet, Defendants' Exhibit No. 25, at page 21. Do you remember that?

A. Yes, sir; I do.

Q. We thought at that time that this abstract, Plaintiff's Exhibit 22, represented the job you have described on your Exhibit 25 at page 21 as one of 996 tons, which appeared on your exhibit to have been awarded to Consolidated Steel Corporation. Have you since checked into that to find out whether that was correctly recorded on your Exhibit 25?

A. Yes, sir.

Q. What did you find the fact to be?

A. You will recollect that I asked you if it had not been bid twice, and I found that was the case. This job was actually bid in May of 1946. Consolidated was low bidder. We therefore marked it on our work sheets as being awarded to Consolidated. However, later all bids were rejected and new bids were taken on January 7 of this year, and on the new bids 224-709 we were low bidder and the work was awarded to us.

Since it was not in the period which we were checking for you we did not get the full circumstances of the case and actually that bid should be out of that tabulation you have, thus reducing the amount of competition.

Mr. WRIGHT. I think the last statement is hardly responsive and should be stricken.

The COURT. You are asking that the last portion of it be stricken?

Mr. WRIGHT. Yes.

The COURT. There is no doubt about that.

Mr. MILLER. I think Your Honor is able to infer the ultimate fact.

The COURT. At this time I am not indulging in inferences, but only regulating the evidence.

Mr. WRIGHT. I think that is all we have with this witness.

Mr. MILLER. I think, Your Honor, that is our case.

Mr. ALFRED WRIGHT. That is the entire case of Consolidated Steel.

The Defendants rested.

Mr. WRIGHT. There is only one thing left, I think, 224-710 and that was to actually have that figure read into the record that Consolidated was going to produce supplementing their answer, the figures of their bookings for the year 1946.

I will ask to have this paper marked with the next plaintiff's exhibit number:

The COURT. That was the information you asked for?

Mr. WRIGHT. Yes. This was the data we requested to supplement the interrogatory in question.

Mr. MILLER. No objection.

(The paper headed "Consolidated Steel Corporation and Subsidiaries, Estimated Fabricated Structural Steel Awards and Shipments for the Calendar Year 1946" was received in evidence and marked "Plaintiff's Exhibit No. 30.")

Mr. WRIGHT. We have only one witness and a couple of tabulations to offer, Your Honor, and Mr. Wein will be the witness. Mr. Kirkpatrick will handle the examination.

The COURT. Suppose we take a recess first.

(At this point a brief recess was taken.)

224-711

## PLAINTIFF'S REBUTTAL EVIDENCE

HAROLD H. WEIN, called as a witness on behalf of the Plaintiff, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KIRKPATRICK:

Q. Where are you employed, Mr. Wein?

A. Department of Justice, Washington, D. C.

Q. How long have you been employed there?

A. Approximately two years.

Q. In what capacity are you employed?

A. As economist.

Q. Have you had experience in statistical analysis in connection with the iron and steel industry?

A. Yes, I have.

Q. Over what period of time have you had such experience?

A. Approximately eight years.

Q. For whom have you done such work?

A. The United States Department of Commerce, the War Production Board, the Office of Price Administration, and the Department of Justice.

Q. Did you make an affidavit which was filed in this case in connection with the plaintiff's application for preliminary injunction?

A. Yes; I did.

224-712

Q. For that affidavit did you tabulate figures from the trade publication "Iron Age"?

A. Yes; I did.

Q. These figures that you tabulated show the relative position of the structural steel fabricators in the eleven-state area?

A. Yes.

Q. After making the tabulation in that affidavit did you secure further information concerning the 1946 tonnage from the companies listed in Iron Age as having done fabricating structural steel business in this market?

A. Yes; I did.

Q. Did you also secure additional information as to such tonnage from the companies which were listed in the answer by Columbia to the Department of Justice questionnaire as companies which that answer showed as doing fabricated structural steel business in that area?

A. I did.

Q. Did you also secure information as to such tonnage from the companies listed in Columbia's and U. S. Steel's interrogatory answers as having competed in this market?

A. I did.

Q. Did you also visit the American Institute of Steel Construction in New York and obtain information as to the tonnage of structural steel fabricated for this market in 1946?

224-713 A. I did.

Q. Will you tell us generally briefly what information is available in those A. I. S. C. records?

A. The American Institute of Steel Construction, Form No. 1, shows contracts received by companies which report to this institute, and it also shows the location of these contracts—that is to say, location of where the work is to be done and the tonnage of these contracts, and in some cases the value.

Q. Did you then tabulate all of the information which you had collected from all of these various sources to show the relative position in 1946 of structural steel fabricators doing business in the Consolidated market?

A. I did.

Q. Is that tabulation which you refer to this sheet headed "Ten Largest Structural Steel Fabricators in the Eleven Western States"?

A. Yes; that is it.

Q. Does this table represent the most accurate showing of the relative positions for the structural steel fabricators in this market for 1946 that is available on the basis of all the figures that you could collect?

A. As far as the information that was available to me I believe it represents an accurate picture.

Q. Did you also prepare a table headed "Bookings of Fabricated Structural Steel Tonnage by Companies in the Eleven Western States for 1946"?

224-714 A. Yes; I did.

Q. Did you also prepare a statement headed "Method of Compiling Bookings of Fabricated Structural Steel by Companies in the Eleven Western States Constituting the Consolidated Market"?

A. I did.

Q. And also a table headed "Proportion of Bookings Tonnage according to Source of Information"?

A. Yes; I did.

Q. Were that statement and those two tables I have last mentioned together with the tabulation showing the ten largest structural steel fabricators given to counsel for defendants on last Monday?

A. Yes; they were.

Mr. ALFRED WRIGHT. I have no copy, counsel.

Mr. KIRKPATRICK. Here is one.

By Mr. KIRKPATRICK:

Q. When this table was prepared, Mr. Wein, was Plaintiff's Exhibit 30 available to you? Was the information reflected on this Plaintiff's Exhibit 30 available to you?

A. No; it was not.

Q. This is an exhibit with information that was just furnished by Mr. Roach this morning. Will you refer to the 224-715 table showing the ten largest structural steel fabricators? Opposite Consolidated you show a bookings net tons of 40,893; is that correct?

A. Yes; it is.

Q. On Plaintiff's Exhibit 30 the comparable figure is what?

A. 36,142 tons.

Mr. MILLER. Have you got a copy for me? I just want to see what it is you are offering.

By Mr. KIRKPATRICK:

Q. Mr. Wein, referring again to the figures we just spoke of, 36,142 from Plaintiff's Exhibit 30, and 40,893 shown on your table of the ten largest structural steel fabricators for Consolidated, should the figure 36,142 be substituted for the figure 40,893 in your table?

A. Yes; it should.

Q. Would such a substitution make any change in the order of the companies on your table?

A. No; Consolidated would still rank as No. 2 in the eleven Western states.

Mr. KIRKPATRICK. The plaintiff offers this table of ten largest structural steel fabricators.

Mr. MILLER. Why don't you offer all your papers at one time?

Mr. KIRKPATRICK. I am not going to offer these.

224-716 Mr. MILLER. Your Honor, in order to facilitate this trial at this late hour I am not going to be technical by raising any objection, only I don't want your Honor to infer from the fact that I do not raise any objection that we either admit the competency, reliability, or probative value of the evidence; but I am not going to object to it.

The COURT. In spite of all those, it is admitted.

(The paper headed "Ten Largest Structural Steel Fabricators in re Eleven Western States 1946" was received in evidence and marked "Plaintiff's Exhibit No. 31.")

224-717

By Mr. KIRKPATRICK:

Q. Mr. Wein, will you just briefly summarize for his Honor—I don't believe he has had a chance to look at it—what that table shows?

A. The table shows the bookings of the 10 largest structural steel fabricators conducting business in the 11 Western states in the year 1946.

According to the table the United States Steel Corporation is the largest, is the company showing the largest tonnage of bookings. That figure is 44,083 tons and constitutes 12.9% of the total bookings of the entire 11 Western states.

The second figure is the Consolidated Steel Corporation. The uncorrected figure which I have in the original tonnage is 40,893 and is subsequently corrected to 36,142 tons. That would reduce the percentage from 12.9% to approximately 10.7%. I am doing this in my head so it may not be accurate.

The Bethlehem Steel Company is the third largest showing bookings of 36,047 tons, or 10.6% of the total.

The fourth largest is the Mosher Steel Company, at Houston, Texas, showing bookings of 29,814 tons or 8.7% of the total.

The remaining companies vary from a high of 6.3% in the case of the Chicago Bridge & Iron Company, to a low of 2.4% in the case of the Structural Steel & Forge Company  
224-718 of Salt Lake City, Utah.

The companies in the list besides the ones named are Isaacson Iron Works, of Seattle, Washington, Kansas City Structural Company of Kansas City, Kansas, Midwest Steel & Iron Works Company of Denver, Colorado, and Northwest Steel Rolling Mills of Seattle, Washington.

The total 10 companies constitute 64.4% of the bookings for this market, and the remaining 80 companies show bookings in the 11 Western states of 35.6%.

By the COURT:

Q. I take it there are 90 companies in that business?

A. There are 90 companies showing bookings in that area.

By Mr. KIRKPATRICK:

Q. Mr. Wein, when you made the affidavit which you referred to earlier, did you also show a comparison of Consolidated's production with a figure called Total Production For This Area for the Years 1937 and 1939?

A. Yes; I did.

Q. Was there an error in that showing?

A. Yes, sir; there was.

Q. What was the nature of the error?

A. The affidavit which I filed with this court, this particular table was referred to as the production in the total Consolidated market; whereas, it really should have been noted as the production in California.

224-719 At the pretrial conference of June 4th I furnished the defendants with a correct table which they had and which they have here.

Q. Is this a copy of the correct table which you refer to?

A. Yes, it is.

Mr. KIRKPATRICK. Will you marked this as the next exhibit?

(Proportion of Consolidated Steel Production to comparable total production in the Consolidated market in the years 1937 and 1939 was received in evidence and marked "Plaintiff's Exhibit 32.")

Q. Mr. Wein, Plaintiff's Exhibit 32, what is the source of these figures?

A. The source of these figures are the United States Biennial Census of Manufacturers.

Q. What is this Biennial Census of Manufacturers?

A. This is a survey taken by the Bureau of the Census every two years for the purpose of obtaining information on production of all manufacturing industries in the United States. The last census was taken in 1939. The war interrupted the taking of the subsequent biennial census.

Q. Is that the reason why only the two years 1937 and 1939 are shown and nothing is shown subsequent to 1939?

A. That is the reason.

224-720 Q. In this table, the first line, it shows total production. Does that cover the total production for the 11 Western states?

A. Yes, it covers the total production of 11 Western states insofar as that is reported by census of manufacturers.

Q. That total production covers what particulars?

A. In this figure there are essentially three census industries. The first is the Fabricated Structural Steel and Ornamental, the second is Power Boilers and Associated Products and the third is Wrought Pipes, Welded and Heavy Riveted.

Q. Is a description of those industries shown in the footnote attached to the table?

A. Yes, there is a description.

Q. Consolidated's production, which is shown on the second line of the table, does that represent the total production of Consolidated and these present subsidiaries for those years?

A. Yes; it does.

Q. Will you just summarize for his Honor the figures?

Mr. MILLER. Have you offered it in evidence?

Mr. KIRKPATRICK. Yes.

Mr. MILLER. May I see the document?

Q. Mr. Wein, going back to the table showing the 10 largest structural producers, which was marked Plaintiff's 224-721 Exhibit 31, the figures shown on that table which you described as the uncorrected figure of 40,000, what is the exact figure?

A. 40,893 tons.

Q. How did you reach that figure? What does that figure represent?

A. The figure 40,893 tons represents the pro-rated tonnage for the entire year based on the tonnage shown by the Consolidated Steel answer for eight months of 27,000 tons approximately.

Q. That is the figure which should be corrected in accordance with Plaintiff's Exhibit 30 furnished this morning?

A. Yes, that is right.

By the Court:

Q. Were all the others arrived at on the same basis?

A. Some of them were and some weren't, your Honor. They all refer to the year 1946.

Q. Might or might not all the other items be subject to the same correction?

A. Yes, some items might be subject to the same correction.

Mr. KIRKPATRICK. That concludes the direct examination.

224-722 Cross-examination by Mr. MILLER:

Q. You are employed by Antitrust Division of the Department of Justice, aren't you?

A. Yes, sir.

Q. Are you a lawyer?

A. No, sir.

Q. An accountant?

A. No, sir.

Q. An economist?

A. Yes, sir.

Q. A statistician?

A. Yes, sir.

Q. Have you been actively assisting in the preparation and prosecution of this particular case?

A. I have.

Q. Reference has been made here to a questionnaire that was submitted by the Department before this suit was brought, submitted to the defendants. Did you prepare that questionnaire?

A. I aided in the preparation of that questionnaire.

Q. The questions were answered by the defendants?

A. Yes, sir; they were.

224-723 Q. And did you analyze the answers?

A. Yes; I did.

Q. Some of those answers had been offered and received in evidence here in this trial, have they not?

A. They have.

Q. Others haven't been offered?

A. That is true.

Q. You also submitted or propounded numerous interrogatories, did you not?

A. The Department of Justice did that.

Mr. WRIGHT. If the Court please, what was done by way of the pleadings in the case, I take it, is a fact here, and it is unnecessary to ask Mr. Wein as to that.

Mr. MILLER. I am examining him and not you, sir.

Mr. WRIGHT. Go ahead.

Q. Did you assist in the preparation of the interrogatories?

A. Yes; I did.

Q. Did you analyze the answers to the interrogatories?

A. I helped them in an analysis.

Q. Some of those have been offered and received in evidence, and others haven't; is that true?

A. That is true.

Q. Now, a reference has been made to an affidavit which you made in this case on an application for a preliminary injunction. You recall that at the pretrial conference—and you even attended the pretrial conference, did you not?

A. I did.

Q. And the other preliminary hearings that have occurred in this matter?

A. That is true.

Q. You recall that at that time counsel, Mr. Wright, suggested that the Government had disclosed its case to us, its entire case, and that we had not reciprocated. Do you remember something of that sort?

A. Yes; I do.

Q. And do you know that he was then referring to this affidavit of yours?

A. I believe he was.

Q. And you have now abandoned your affidavit, have you?

Mr. KIRKPATRICK. I object, to this question, Your Honor.

Mr. MILLER. Counsel interrogated him on direct about his affidavit.

The COURT. I am not quite clear of the basis of that question, sir.

Mr. MILLER. Counsel, on his direct, interrogated the witness as to the data prepared by him in the affidavit for the purpose of showing the relative position of the 224—725 different companies. He has now introduced in evidence something entirely different, and I am asking him if he has abandoned that affidavit so far as it relates to that subject.

224—726 The COURT. By "abandon" you mean correction of figures?

Mr. MILLER. Well, I really mean abandon, but I will adopt your Honor's suggestion.

The COURT. I was not trying to correct any language; I was only trying to get your thought.

Mr. MILLER. My thought includes abandonment; but I will simply ask the witness this question:

By Mr. MILLER:

Q. Have you found it necessary to correct the figures?

A. I have found it necessary to correct the figures in the "Iron Age" table and to correct the figures in the table taken from the census of manufacturers; that is correct.

Q. You stated on direct examination that you had written to the members of the industry submitting a questionnaire and had made up this table that has been offered in evidence in part on the answers to that questionnaire; is that correct?

Mr. KIRKPATRICK. If your Honor please, I don't believe that is what the witness testified to.

Mr. MILLER. I am trying to find out.

By Mr. MILLER:

Q. Is that the fact?

A. What I did say is that I wrote to these companies asking them for their tonnage of fabricated structural bookings let in the eleven Western states over the period in question.

224—727 That is what I wrote.

Q. And the figures that you now gave to his Honor are based on the answers to those letters?

A. A proportion of the figures is based on those answers.

Q. What proportion?

A. Out of the total of 90 companies composing the table the figures from 48 of those companies are derived from the companies' letters to the Department of Justice. Those 48 companies account for 68% of the total tonnage shown in that table.

Q. You wrote letters to 98?

A. No; I wrote letters to 135.

Q. To 135? You received replies from 48?

A. No; I received replies from 119.

Q. Yes; I misunderstood you. With reference to the 48, where does that come in? I thought you used the number 48?

A. Yes, Governor; that was in response to the constitution of this table. Not everybody who answered the letters showed any tonnage done in the eleven Western states. Naturally the companies which did not show any business there were not included in the table.

Q. How many of these 130 did not answer at all?

A. Well, the difference between 135 and 119 or 16 companies.

Q. Sixteen companies did not answer at all? How many did not show where the tonnage went at all? How many

224-728 reported tonnage without telling you where it went?

A. To answer that question I would have to go through the work sheets and I would be glad to do that.

Q. You would?

A. Yes, sir; I would. I have them here and I am prepared to go through them.

Q. Can't you tell me approximately?

A. No.

Q. Some of them reported tonnage without telling you where it went, didn't they?

A. Yes; that is true.

Q. And you now can't tell us how many there were?

A. Not the number of those. I think there are approximately a dozen.

Q. Well where did you get the 48? You mentioned the number 48. What was that?

A. The 48 companies that we have are companies answering that they have done business in the eleven Western states and showing the bookings.

Q. Then your table is made up in part from the answers given by 48 of the companies included in the list of 135 to whom you wrote letters?

A. Yes; that is correct. In addition it is made up of others.

Q. I want to follow that. What percentage of your 224-728 total here is based on the information obtained from that 48?

A. 68%.

Q. 68%? Where did you get the balance of your information from?

A. Twenty-eight companies were derived from reports to the American Institute of Steel Construction. They constituted 29.9% of the tonnage shipped.

Q. What does that make up?

A. That makes up 97.9%.

Q. Where did you get the balance from?

✓ A. From the Iron Age, 2.1%.

Q. I used the term "abandoned." Your figures in your affidavit were taken from the Iron Age. Would you adopt my suggestion that you have abandoned those figures?

A. I have abandoned the Iron Age figures with the exception of the 2.1%.

Q. You have now a different list of the ten important companies, haven't you, than you had in your affidavit?

A. I have to check that and see.

Q. Have you got your affidavit there? I think you better have the affidavit.

A. Well—

Q. You have a different list of companies now than you had in your affidavit, haven't you?

A. I am trying to compare them.

224-730 Q. To save time, you have now changed the Bethlehem Steel Company from first to third place, haven't you?

A. Yes; that is correct.

Q. You have put U. S. Steel at the top, haven't you?

A. Yes; that is correct.

Q. And with that correction that you just made a little while ago you have just put Consolidated under the wire and show it ahead of Bethlehem, haven't you?

A. That is correct.

Q. I notice in your affidavit you have the Joshua Handy Iron Works.

A. Yes.

Q. You put it number five, didn't you?

A. Yes; I did.

Q. Have you got it in your present list?

A. Not amongst the first ten. I have it in the larger list.

Q. You included it in your 90 or 100 that also ran?

A. Yes; that is right.

Q. And you had it fifth in the Iron Age list?

A. That is correct.

Q. And you had 6,282 tons accorded to it?

A. That is correct.

Q. How much tonnage do you give it now?

A. 2,965.

224-731 Q. You have reduced that 4,000 tons?

A. According to the information given to me by the company directly I reduced it.

Q. You find the Hardie-Tynes Company there?

A. That is correct.

Q. Is it in your present list of ten?

A. No; it is not.

Q. You had it in there for 6,000 tons?

A. That is correct.

Q. What is it now in your present list? That is also an "also ran," is it?

A. It is not in the present list.

Q. It is not in the present list at all?

A. The reason—

Q. Do you think it has gone out of business?

A. The reason why it is not in the present list is that the company reported directly that it is not engaged in the structural fabricated steel business in the eleven Western states.

Q. It did?

A. Yes.

Q. Haven't you heard its name mentioned in this trial?

A. Yes; I have.

Q. As one of the structural fabricators in the West?

A. Yes; I have heard the name mentioned.

224-732 Q. You say you have accepted some statement in answer to an inquiry as the basis for dropping it out?

A. I accepted the statement of the Hardie-Tynes Manufacturing Company to the Department of Justice that they do not engage in fabricated structural steel in the eleven Western states.

Q. Mr. Wein, you have been in the Department of Justice for how long?

A. Two years.

Q. Actively assisting in the preparation and prosecution of anti-trust cases?

A. That is correct.

Q. Do you distinguish between getting data from standard authorities who accumulate data and whose work is generally accepted in the industry to which it relates and a party to a lawsuit, whether it be the Government or not, writing letters to people who were not produced for examination and putting in evidence a tabulation based on their answers? Do you distinguish between those two things?

A. I can distinguish between those two things.

Q. Quite a distinction, isn't there? But you in this case in departing from your table which you attached to your affidavit or included in your affidavit for the purpose of showing the relative positions of these companies adopted that method of providing evidence for his Honor, did you?

224—733 A. I don't know which method you are referring to.

Q. I am referring to the method of writing letters to people, 135 you say, whom we have no means of examining and basing a table which you are asking the Court to give credit to on such information. Is that what you have done here?

A. The only way I know of obtaining information from people is to ask them, Governor.

Q. I think that is quite so. And the way the Courts have is by obtaining that information on their sworn testimony. You are aware of that; aren't you?

Mr. KIRKPATRICK. I object, your Honor, I think these questions are rather argumentative.

Mr. MILLER. I submit, your Honor, that this is the most amazing tabulation based upon information collected in that manner we have ever seen presented in a court of justice, and it is a fair subject of cross-examination.

The COURT. The only objection made is to this specific question, the form of this specific question.

Mr. MILLER. I will pass it to save time.

The COURT. All right. Question withdrawn.

By Mr. MILLER:

Q. Well, we were on the Hardie-Tynes. Now, I discover that you pulled one of these companies out of the "also ran" class and put it up in the first ten, the Isaacson Iron Works, and you credited it with 10,600 tons. Do you know how much  
224—734 you included for it in the computations you made as the basis of your affidavit?

A. I can look that up and check it.

Q. Please do so.

A. Yes, Isaacson Iron Works, 125 tons.

Q. As the basis of your affidavit you credited it with 125 tons and you are now crediting it with 10,656; is that correct?

A. That is correct.

Q. Well now, the Chicago Bridge Company is still in the front line and you now have credited it with 21,500 tons; whereas in your affidavit you had 4,900.

A. That is correct. That is to say, the present tonnage of Chicago Bridge is about five times what it was in the Iron Age.

Q. Judson-Pacific Company; what have you done with that?

A. In the Iron Age list Judson-Pacific is listed as 3,889 tons.

Q. What have you done with it now?

A. In its responses to us Judson-Pacific—

Q. No, I am not asking you what Judson-Pacific's response to you was. I am asking you what you have credited to it here.

A. 5,443 tons, a larger figure.

224—735 Q. Now, you have in your affidavit the Midland Structural, and you have the Structural Steel & Forge Company. Do you know whether that is the same thing?

A. No, the Structural Steel & Forge Company is located in Geneva, Utah.

Q. That has dropped out of the first group of runners?

A. Which, the Structural or the Midland?

Q. Midland, Structural, I find it in one and I don't find it in the other.

A. Midland is not in the second one, that is correct, in the present tabulation.

Q. Well, now, I don't find in either one a company whose name we have heard very often in this courtroom this week, Poole & McGonigle. You heard that name mentioned repeatedly here, didn't you, when Mr. Obbard was on the witness stand?

A. Poole & McGonigle is in the second list.

Q. In what second list?

A. The list which I have not submitted to the Court.

Q. It is in the second list?

A. Yes.

Q. It is not in the first list, however?

A. You mean as among the Big Ten?

Q. Yes; the Big Ten.

224—736 A. It is not in the Big Ten. That is right.

By the Court:

Q. It is not in the Big Ten in the subsequent list; it is just among those other 80 remaining companies?

A. That is correct.

By Mr. MILLER:

Q. Do you happen to know anything about what sort of company it is?

A. Other than what it says, namely, it engaged in the production of fabricated structural steel.

Q. Do you recall hearing its name mentioned perhaps more frequently than any others, except the very large ones?

A. No; I don't.

Q. And you say what you have attributed to them you have taken from some letter that they wrote to you?

A. What I attributed to them in the second list?

Q. Yes.

A. No. The second list of Poole & McGonigle should be identical with the first list. It is taken from "Iron Age." They didn't answer our letters nor did they report to the American Institute of Steel Construction.

Q. How many were there in the 2-odd percent that you got where you are still sticking to the "Iron Age"?

A. How many companies?

Q. Yes.

224-737 A. 14 are still in this list.

Q. You don't know anything about what you might have got from them then?

A. No; I don't.

Q. You put them in here just exactly as they were reported in the "Iron Age"?

A. Yes; I did.

Q. Did you do any averaging in making up this document now before the Court?

A. I don't understand the question.

Q. Don't you know what I mean by averaging.

A. I know what I mean by averaging.

Q. I will take your meaning. Did you do any averaging in arriving at any figures as the basis of this exhibit?

A. No. I did two things:

One was prorating, as in the case of Consolidated, and prorating is the process of attributing a certain proportion—for example, if the company reports for 17 months and you wanted a 12 months' average, the prorating of that figure would be  $\frac{12}{17}$  for that year.

The second thing which we did, I used the term allocation. That is, in the case of a company with which you did business in the 11 Western states but nevertheless didn't report the identity of the states, simply said it did business, and the question came up as to how much was in the 11 Western states, how much was in the total. That is the term I use, allocation.

Q. And those allocated figures are part of the basis of this document?

A. Yes. The allocation is done in two ways. Do you want to know that?

Q. You might tell me.

A. Well, in the case of a company which we know has engaged in business of the 11 Western states, but which reported no tonnage for the 11 Western states, we had several alternatives:

One was to either eliminate them from the 11 Western states; the other was to try to allocate some proportion of their business

to the 11 Western states. We took the latter course so as not to exclude any information from the 11 Western states and to get a larger rather than a smaller figure.

That allocation was done as follows:

The years 1939, 1940, and 1941 from the American Institute of Steel Construction showing the total amount of bookings in 11 Western states, were averaged as a proportion of national bookings.

In other words, if a company had, let us say, 10,000 tons unallocated and no tonnage in the 11 Western states, we 224-739 gave the proportion which the 11 Western states constituted of the entire national market. The figure happens to be 15.7%.

Q. I notice that in your affidavit you gave Bethlehem 58,700 tons credit.

A. Yes; that is right.

Q. And in your new list you have reduced that to 36,000.

A. That is correct.

Q. You gave the Consolidated 33,800 in the affidavit and you have jumped that up so it has just nosed out Bethlehem here in this document?

A. The prorating of the tonnage reported by the Consolidated Steel Corporation—that is to say—the tonnage reported by Consolidated was for eight months.

The question was as to whether we use an eight-month figure or a year figure. We prorated the eight-month tonnage for the year. That figure came out 40,893 tons. The actual figures came out about 37,000 tons, a difference of 6%.

Q. And you have jumped the U. S. Steel from—no, you have reduced them.

A. Reduced them.

Q. You have actually reduced U. S. Steel's tonnage from 57,000 to 44,000?

A. In accordance with their statement of U. S. Steel.

Q. Did you get a letter from the U. S. Steel?

224-740

A. No; it was put in through the evidence, as I recall.

Q. That was the admission that bound the U. S. Steel, wasn't it?

A. I presume it was.

Q. It was evidence that you were entitled to use as against U. S. Steel, wasn't it?

Mr. KIRKPATRICK. I object, your Honor.

Q. Well, now, I see by your exhibit that this is a table of bookings. Did you hear Mr. Alden Roach when he was last on the stand state the difference between bookings and shipments?

A. Yes; I did.

Q. Did you hear him say that the bookings were no indication of their normal business because they might get an order for a large project that would take a long time to fill? Did you hear him say that?

A. I heard him say that.

224-741 Q. I take it from your intonation of your voice that you are inclined to dispute him; is that right? Do you want to dispute him?

A. I didn't say that. I said I heard him say that.

Q. You stated that in a rather peculiar tone of voice and I want to know if you intend to dispute it.

Mr. KIRKPATRICK. I object, your Honor.

By Mr. MILLER:

Q. Do you have any doubt about the truth of his testimony?

The COURT. I think maybe the former question is a little objectionable. The present question is "Do you have any doubt about the truth of his testimony?" Have you any objection to that?

A. Have I doubt about the correctness of what statement?

Q. You have lost it, have you?

A. I have lost it.

Q. We will pass on.

The COURT. If you want the question we will have it reread to the witness, Governor.

Mr. MILLER. No, I won't take the time.

The COURT. Question withdrawn.

The WITNESS. I will be very happy to answer it.

Q. You know there is an exhibit that has been put in evidence by the Government which shows comparison between booking and shipments for 1946—37,731 tons of bookings and

224-742 20,000 tons of shipments, your own Exhibit 30. You recognize that, don't you?

A. For the Consolidated Steel Corporation; yes.

Q. Yes; that is what we are talking about. That is one company that we happen to have the evidence that has been furnished you, and that company is also here and can be cross-examined.

Do you think this Exhibit 31 is a fair portrayal of the relative position of the companies stated on it?

A. Which exhibit is 31? The one—

Q. This is your own exhibit of the ten companies.

A. Yes, sir; I certainly do.

Q. Well, I will leave it at that. Now let us go and look at your other exhibit.

The COURT. Governor, may I interrupt to ask one question?

By the COURT:

Q. I understood Exhibit 31 is based upon bookings and the comparison of totals of those various ten companies?

A. Yes.

Q. Was your affidavit based on bookings or shipments or on what basis?

A. It was based on bookings.

Q. Based on bookings?

A. Yes.

224-743 Q. Your affidavit says on contracts.

A. Contracts or bookings.

Q. Even though the contracts had been completed by shipments made?

A. These were contracts awarded in the Iron Age. The material we have is contracts awarded.

Q. So that the basis of bookings is the same in both?

A. Yes.

By Mr. MILLER:

Q. Now, you have presented some figures from the census, have you?

A. Yes; I have.

Q. And the census is generally accepted as standard authority, isn't it?

A. It certainly is.

Q. We are not quarreling about that. Your exhibit that has been offered in evidence here, Exhibit 32, gives the total production for 1937 and 1939 of the entire country and of Consolidated and the percentage of Consolidated of the total, doesn't it?

A. No; that is not correct. What it does give is the total production in the eleven Western states insofar as reported by the census, not for the entire country.

Q. Very good. And Consolidated's production sold in the eleven states?

224-744 A. No; not Consolidated's production in the eleven states and sold in the eleven states; its entire population whether it was sold in the eleven states or not.

Q. What I am getting at is you took the entire production?

A. Correct.

Q. The census breaks that production down to kinds and classes, doesn't it?

A. Not by states it doesn't.

Q. You have given it the total for the eleven states?

A. When you say "kinds" and "classes" what do you mean?

Q. Classes of products. Don't you know what I mean by "classes of products"?

A. No. You see, the census industry heading, for example, "Power Boilers and Associated Products" will have a number of products in that heading. I don't know which term you are referring to, the heading of the industry or within the industry.

Q. I am now asking you if the census figure give the amount of sales of structural material, of plate material, and of pipe material?

A. Yes; they give that.

Q. You included them all?

A. Yes; I did.

Q. I am now talking about the year 1937. Do you know that the census gives \$33,738,000 of structural? I am omitting the odd figures. Do you know that it gives \$33,738,000 of structural, \$18,839,000 of plate, and \$3,453,000 of pipe?

A. May I look at the census to see that? I don't carry those figures in my head. I can identify them. If the census gives them, they did.

Q. At the moment I want you to tell me whether or not that gives the break-down.

A. What industry are you talking about now?

Q. You don't know what industry we are talking about?

A. Well, there are three question. Which figures are you referring to?

Q. I am asking you if the census does not give separately the amount attributable to structural, the amount to plates, and the amount to pipe, making up what you have totalled as \$56,000,000?

A. Yes, I have so stated in the notes; it does.

Q. Are those figures what I have just given you \$33,738,000 for structural—I am not giving the odd dollars—

A. Just a moment. What is this? Total full production?

Q. In structural.

A. Structurals for which states or for the total?

Q. We are talking about eleven states, aren't we? We are talking about the component parts of your figure \$56,000,000 in this exhibit.

A. I see.

224-746 Q. That is what we are talking about.

A. 1937 fabricated structural products \$33,738,000.

Q. Exactly. Now give the plate. You have got it in a memorandum that you yourself have taken off.

A. Not in a memorandum, in the work sheets.

Q. Well, work sheets. Give the plates.

A. That is power boilers that you mean, plates, or do you mean the wrought pipe?

Q. You are the witness; I am not. I want what you have under "Plates."

A. I don't have a classification "Plates", Governor. I have two classifications which would embrace plate products. One is "Power Boilers and Associated Products" and the other is "Wrought Pipe Welded and Heavy Riveted."

Q. They are two separate classifications?

A. That is right. They are both made out of plates.

Q. What is the total?

A. For the power boilers 1937 and the total is \$18,839,311. For wrought pipe 1937 the total is \$3,453,000.

Q. Quite so. You did have the exact figures that you thought you did.

A. Yes, I did; but I didn't know what you meant.

Q. Now, you have lumped those together to make a total of \$56,000,000 in order to determine, I judge from testimony you have given, what Consolidated's percentage of that was?

224-747 A. I have.

Q. And your exhibit says that that was 28.7%.

A. In 1937.

Q. Now I want to find out what you included in Consolidated, how much structural did you include in Consolidated?

A. Whatever the Consolidated interrogatories report.

Q. Haven't you got it in your work sheets?

A. No. I believe I lifted the figures directly out of the information provided to us by the Consolidated Company. I have no work sheets other than that for Consolidated.

Q. The answers to the interrogatories?

A. Yes, sir.

Q. Do you know as a matter of fact the structural there was \$3,949,000? I am leaving off the odd dollars.

A. You mean in the answer to the interrogatories?

Q. I mean wherever you got the figure from.

A. If you show me that I will verify it.

Q. This isn't anything that you ever saw. You have given in your figure here Consolidated's production of \$16,000,000 for 1937, haven't you?

A. Yes, I have.

Q. I want to know how you made it up.

A. I made it up by taking the answers given to us by the Consolidated Steel Corporation.

Q. Can you tell me how much you put in for structural?

224-748 A. Well, if I can refer to the sheets I will.

Q. Well, you find it where you did it. I want the exact thing.

Mr. WRIGHT. The exhibit is in evidence.

Mr. MILLER. Well, he should know where it is. I didn't make the figure.

By Mr. MILLER:

Q. Is there any reason why you don't like to look at those figures?

A. Not at all.

The COURT. You have asked the witness a question and until we can get the answer we will have to rest a moment.

Q. The question is "What did you include for structural material"?

By the COURT:

Q. As I understand it, you want the breakdown of the \$16,074,000?

A. That is correct. May I have a piece of paper?

By Mr. MILLER:

Q. Give me first the structural. Go right through and give me the whole breakdown.

A. Well, this will take some time, Governor. I have to go through many sheets here.

By the COURT:

Q. How many items make up the \$16,000,000?

224-749 A. Well, sir, they have it for individual companies, Consolidated Steel of California, Consolidated Steel of Texas, Western Pipe & Steel, and—

Mr. MILLER. Maybe I can obviate it in this way:

By Mr. MILLER:

Q. You have just told us and told his Honor that it would take you some time to make up these figures, and time is fleeting. Will you listen to me, Witness?

A. Yes.

Q. You said it will take a considerable time?

A. Yes. I said it will take me about ten or fifteen minutes.

Q. Well, that is very precious.

The COURT. Oh, I have all the afternoon, sir.

Mr. MILLER. I think we can get this another way. I will put it this way:

Q. I have the break-down. You did not prepare the break-down for me. I will ask you if you will make a note of these figures and then during the recess you can check to confirm them and I think we can save time that way.

Mr. WRIGHT. Haven't you got the figures, Governor, in your exhibit?

Mr. MILLER. Never mind; I am examining the witness, sir.

Q. The figure that I have is structural. I am now 224-750 taking the component parts of your \$16,074,620. You have that figure accurately? Now, that break-down as I have it is structural \$3,949,604, which would be 11.7% of the total structural and not 28.7%.

A. Your Honor, that is not what this table means. The 28.7% is not the percent of structurals; it is the percent of the total.

By the Court:

Q. That you have totalled all together?

A. That is right.

Q. That is what Governor Miller is asking you about now.

Mr. WRIGHT. That is what he said on his direct examination.

By Mr. MILLER:

Q. The next item is plate. Under the Institute terminology apparently that is under boilers and the like, and the figure I have is \$4,609,223, and the percentage of the plate corresponding figure in the total above I make 24.4%. For this welded-wrought pipe the figure that I have is \$6,240,258 of Consolidated's. Then I find that you included in this figure of \$16,000,000, \$1,275,535 for miscellaneous groups of products.

Now, if you will check those figures and be prepared to say whether they are right or wrong, I will proceed on the assumption that they are right, because I think they are; and I call your attention to this fact; namely, that under, pipe, 224-751 wrought pipe, welded pipe, the total sales with which you are making comparison was \$3,453,609, and that Consolidated's, according to your table, was \$6,240,258 or 181% of the total. Now, can you account for that if it should be confirmed by your examination?

A. I will attempt to account for it.

Q. Can you do it as you sit on the witness stand now?

A. No; not at the moment.

Q. Had you discovered that fact?

A. No; I had not.

Q. That didn't have anything to do with your hesitation in confirming these figures?

A. I assure you it did not.

Mr. MILLER. Now may I have the original Exhibit 32?

Q. Now, I show you the original of this exhibit that I have been examining you about and I am going to pass up for the time the year 1939, except I want to call your attention to another figure for you to verify, that in the year 1939 the total of structural was \$31,831,325 and of Consolidated's was \$2,523,781 or 7.9%; that the

total for pipe for the industry as a whole was \$4,114,175 and for Consolidated was \$3,999,690; and for that year there was a miscellaneous group of \$1,707,670; so that Consolidated's percentage of pipe business this year dropped from 181% in 1937 to only 96.8% in 1939 according to your calculation.

224-752 Now, in this Exhibit 32 you have quoted from the census, haven't you.

A. I have.

Q. Do you notice next to the last paragraph some asterisks?

A. Yes.

Q. Do you know why you put those asterisks there in place of the actual text?

A. May I have the census?

Q. I am going to read it to you, sir. I ask you without reference to the census do you know why you omitted it?

A. No; I do not.

Q. I am going to read it to you and see if you can discover a reason for omitting it. We are dealing with wrought pipe, welded and heavy riveted, and the first sentence you have in what I am reading says:

"This industry, as constituted for census purposes, embraces establishments primarily engaged in the manufacture of iron and steel wrought-welded pipes, tubes, lock-joint and heavy riveted pipes, and electrical conduit."

Now I am reading what you starred:

"These commodities are also produced to a large extent by establishments classified in the steel works and rolling mills industry. The production of electrical conduit from purchased pipe is classified in the wiring devices and

224-753 supplies industry, and the production"—note this—"of seamless pipe and tubes is classified in the steel works and rolling mill industry."

That is the sentence I am particularly directing your attention to. "Detailed statistics covering the total production of wrought pipe in all industries in which it is made are given in the report for the steel works and rolling mill industry" and then your quotation proceeds from that point.

Now, as I have read that to you did you discover any reason why you might have wished to omit that statement?

A. Yes. In 1939 there were no seamless pipe produced in the eleven states with which we are concerned. They were not produced by rolling mills or anybody else there.

224-754 Q. And yet the census classified it as in a separate classification?

A. Yes; the census does many times, attempts to discriminate, between production classified in the census industry as well as production classified in some different industry.

Q. Why didn't these various census figures give the production of seamless?

A. Yes, they did, but there was no seamless produced in 1939 in the Western 11 states.

Q. There never has been, has there?

A. That is right.

Q. Exactly.

A. That is why I left it out.

Q. Seamless is produced in the East?

A. That is why it isn't relevant to this table.

Q. You think it is not a relevant fact here?

A. It is not relevant to the figures of this table.

Q. Well, now, as a matter of fact, the census gives figures separately of the wrought welded pipe, as I make it out, it is about 165,000,000 and of the seamless around 151,000,000. You know that, don't you?

A. For the 11 Western states or for the entire country?

Q. Don't you know I am talking now about the 224-755 census figures for the entire country?

A. Now I know it.

Q. You think that is wholly irrelevant, do you, to this lawsuit?

A. To the figures for the 11 Western states.

Mr. KIRKPATRICK. I object to that question.

The COURT. What is the objection?

Mr. KIRKPATRICK. The question whether this witness thinks a certain matter is relevant to this law suit is argumentative.

The COURT. Isn't this witness the one who has brought the tabulations supporting this lawsuit?

Mr. KIRKPATRICK. Supporting certain facts.

The COURT. As supporting certain facts but as to the inclusion of items in those tabulations.

Mr. KIRKPATRICK. I believe the question was whether a certain fact was relevant to this law suit.

The COURT. I overrule the objection.

The WITNESS. Will you please repeat the question?

(Question read by the reporter.)

The COURT. Do you understand the question?

The WITNESS. Do I think that what is wholly irrelevant to this law suit?

The COURT. Will you restate your question, Governor, so the witness will understand it?

224-756 Q. Now, I am talking about the fact that the census classifies the business that we are talking about among the wrought steel, welded, seamless. That fact and the fact that it gives a total of each separately in the figure. Do you consider those facts, since you have resorted to this census, irrelevant in this case?

No, I don't consider them irrelevant.

Mr. MILLER. That is all I care to examine.

Mr. ALFRED WRIGHT. I have no further questions.

Redirect examination by Mr. KIRKPATRICK:

Q. Mr. Wein, on cross-examination I believe you explained the method by which you allocated to various states tonnage which was not reflected in the reports as belonging to those states. Do you happen to know what method for such an allocation is used by the AISC?

A. They use several methods. If they can obtain the tonnage from the magazine "Steel," as reported for the states and that tonnage is not reported to them, they include that. If the state is located in the 11 Western states they assume that all the tonnages go in there, and that is the same assumption I have made.

Q. That was the same assumption that you made in the description of the allocation that you have given?

224-757 A. Yes, that is the same assumption.

Q. That is the same assumption that is used by the AISC in computing similar figures?

A. Yes, it is made in the 11 Western states.

Q. Mr. Wein, I call your attention to Defendants' Exhibit 50. On that exhibit are the AISC figures shown there?

A. Yes, they are.

Q. Are those booking figures or shipping figures?

A. The table reads "Fabricated Structural Steel Bookings for Shipment Into the 11 States."

By the Court:

Q. Bookings, what?

A. Bookings for shipment into the 11 states.

Q. Bookings or shipments?

A. Bookings for shipments.

The Court, I beg your pardon.

Mr. KIRKPATRICK. If the Court please, since Governor Miller, on cross-examination, referred to certain of the data from the three tables which we referred to earlier, and which Mr. Wein identified, to complete the record, since Mr. Wein was using some of the information from this, I would like to offer these three tables.

Mr. MILLER. Go ahead.

The COURT. They may be admitted without objection.  
224-758 (Paper entitled "Bookings of Fabricated Structural Steel Tonnage by Companies in 11 Western States for 1946" was received in evidence and marked "Plaintiff's Exhibit 33.")

Paper entitled "Method of Compiling Bookings of Fabricated Structural Steel by Companies in the 11 Western States Constituting the Consolidated Market," was received in evidence and marked "Plaintiff's Exhibit No. 34."

Paper entitled "Proportion of Bookings Tonnage According to Source of Information," was received in evidence and marked "Plaintiff's Exhibit 35.")

Q. Calling your attention, Mr. Wein, to Plaintiff's Exhibit 32, which is your table, in preparing that table were you attempting to include all the figures which were relevant to this law suit in that table?

A. Yes, I was.

Q. Do you believe that that table reflects all of the figures which are necessary and relevant to show the figures, the percentage, which you were trying to compute in that table and which the table is labeled and in which it is designed to show? Do you believe that all the available figures and all the relevant figures are included?

A. I guess so.

Mr. MILLER. Counsel is following the bad example of copying my questions, I am afraid, but I have no objection.

Q. Mr. Wein, in preparing that exhibit that we were  
224-759 talking about, that last Exhibit 32, were you making any effort to collect in that exhibit all of the figures that were relevant to any issue in this law suit?

A. Not at all. I didn't collect all the figures relative to the issue in the law suit. I collected simply figures designed to show what the total production of Consolidated Steel Corporation was as to a proportion of the total production of the census industries to which Consolidated Steel Corporation would report in the 11 Western states.

There are many other figures which are relevant to this law suit, and these figures are contained, I suppose, in other exhibits.

Mr. KIRKPATRICK. I think, your Honor, that concludes the examination. I believe Governor Milier has left with the witness certain documents.

Mr. MILLER. If counsel wants to rest now, we will rest.

Mr. WRIGHT. We don't want to rest. We want to clear up this question that you left in the air as to whether you wanted with those

figures, if they appear to be accurate, which we had no time to determine while we were on the stand.

We have only one thing, and that is this Annual Report of 1946 of the United State Steel Corporation.

Mr. MILLER. Put it in evidence.

Mr. WRIGHT. That would be our next exhibit.

224-760 (Annual report of 1946 of the United States Steel Corporation was received in evidence and marked "Plaintiff's Exhibit 36.")

The Court. We will recess until 3 o'clock.

(At this point recess was taken until three o'clock p. m., the same day.)

224-761 Three o'clock p. m., the same day.

Present: As before noted.

HAROLD H. WEIN (resumed).

Re-cross-examination by Mr. MILLER:

Q. Have you checked the figures I gave you?

A. Yes, I have.

Q. Do you find them to be correct?

A. Yes, they are correct.

Mr. MILLER. That is all.

Mr. KIRKPATRICK. If I may, your Honor, I would like to clear up a couple of points on the cross.

Redirect examination by Mr. KIRKPATRICK:

Q. On cross-examination, Mr. Wein, Governor Miller asked you in relation to the exhibit where the asterisks were placed in the footnote, Exhibit 32, and asked you about the omission

224-762 of certain language which he read to you. The record and the explanation which you gave as to seamless pipe seems to be clear; however, there is some question as to the wrought pipe. Would you please explain about the omission of wrought pipe?

Mr. MILLER. And miscellaneous kinds of pipe as well.

A. Yes. The census classification of wrought pipes is—I think I might as well read the census definition.

Mr. MILLER. Where are you reading from? What page?

A. (Continuing.) It is page 236 of the 1939 edition. The description of the industry:

"This industry, as constituted for census purposes, embraces establishments primarily engaged in the manufacture of iron and steel wrought-welded pipes, tubes, lock-joint and heavy-riveted pipes, and electrical conduit. These commodities are also produced, to a large extent, by establishments classified in the 'Steel works and rolling mills' industry. The production of electrical

conduit and from purchased pipe is classified in the 'Wiring devices and supplies' industry, and the production of seamless pipes and tubes is classified in the 'Steel works and rolling mills' industry. Detailed statistics covering the total production of wrought pipe in all industries in which it is made are given in the report for the 'Steel works and rolling mills' industry.

224-763 "The phrase 'made in plants not operated in connection with rolling mills' refers to production in plants operated entirely independently of rolling mills, although they may be in some cases under the same ownership."

224-764 Now, the table which I presented has that in substance, has that definition, and if we will look now at the table referred to where the total figures are given in the steel works and rolling mill industry we will see there that there are no figures given broken down by states which will give you wrought pipes, welded and heavy riveted. Furthermore, for industries already in connection with rolling mills there are no industries located in these eleven states—there are no plants located in these eleven states which produce this type of product operated by rolling mills; therefore the material which I gave in this census classification covers all production of this type of pipe made in the eleven states to which it refers.

Q. Mr. Wein, in connection with the figures which Governor Miller read to you on cross-examination and suggested that you check, will you please tell the Court what you did with those figures?

A. Yes, I will. I have checked the figures read to me by Governor Miller. The census classification for 1937—the census industry wrought pipe for the year 1937 shows the following production: \$3,453,609. That includes 15 establishments, all located in the State of California. The material taken from the answer of the Consolidated Steel Corporation for which this would go into this census classification is as follows:

224-765 Heavy pipe, \$5,263,928.

Light pipe, \$187,553.

Well casings, \$788,777.

That makes a total for Consolidated Steel Corporation and its subsidiaries in that state of \$6,240,258 or roughly about twice as much as what the census reports in that year. There is clearly a discrepancy in these two figures and I did not realize it at the time. The only way for me to determine which figures are substantially correct is to examine the actual reports made by Consolidated Steel and its subsidiaries to the Census of Manufacturers to determine whether the classifications are exactly the same.

Q. Mr. Wein, when you read those figures, the Consolidated figures which you just read, did those come from Defendants' Exhibit 60?

A. Yes, they came from this one, if that is 60. Yes, I guess that is 60.

Q. This is 60, is it not?

A. Yes.

Q. That is what they came from?

A. Yes. I have, of course, examined the figures for the other classifications and I can read them to you for 1937 and 1939.

We will start with 1937.

The boiler shop products industry, which is essentially the industry classification referring to the plate products made by Consolidated shows a production in the eleven states according to the Census of Manufacturers in 1937 to \$18,839,311. Eighty establishments reported for that figure. The Consolidated Steel Corporation total for that is \$4,609,223. There the figures are clearly consistent.

The same story substantially holds for 1939. In the industry fabricated structural steel consensus classification gives a total for eleven states in which 165 establishments reported in 1939 of \$33,738,439. The definitions of "structural" used by the defendants shows in that year \$3,949,604. These two figures are also consistent.

The only inconsistent figures are the ones relating to wrought pipe, and on the basis of the evidence in front of me I could not tell which reference—whether the classifications are comparable.

Q. Those last figures representing Consolidated's purchases which you just read, \$3,949,000, do they likewise come from the same Defendants' Exhibit 60?

A. Yes, it does.

224—767 Q. Mr. Wein, would you read into the record, to make sure that all of the figures for 1939 as well as 1937 are reflected in the record covering this material which Governor Miller suggested?

A. Very well. The census classification Wrought Pipe Welded and Heavy-riveted, etc., for 1939, shows a total production of \$3,990,690, which includes 14 establishments.

The Consolidated Steel Corporation's figures are as follows: Heavy pipe, \$3,041,859; light pipe, \$238,771; well casing, \$710,060; total for Consolidated of \$4,114,175, compared to the census of \$3,990,690, a larger figure.

For boiler shop products for the plate classification, in 1939 the total Consolidated value is \$2,360,190. The census reports give a figure of \$15,345,584, a figure based on the reports of 85 establishments.

The fabricated structural steel shown by Consolidated in 1939 is \$2,522,781. The total shown by the census in 1939 is \$31,831,325, based on the reports of 180 establishments.

Q. That completes your summation of the check of those figures; is that correct?

A. Yes, it does, substantially.

Q. To make clear something which I am not certain is clear in the record, Mr. Wein, Plaintiff's Exhibits 33, 34, and 35, are those the supporting data for Plaintiff's Exhibit 224-768 31?

A. Yes, they are.

Q. Were copies of Plaintiff's Exhibits 31, 33, 34 and 35 all delivered, copies of each of those, to Mr. Blough last Monday?

A. Yes, I delivered these to Mr. Blough.

MR. KIRKPATRICK. That is all.

Re-cross-examination by Mr. MILLER:

Q. Just a question or two. You made up this table we are talking about, Exhibit 32, to show the position of Consolidated in the industry, its relative position; is that right?

A. That is correct.

Q. And you took the total of the census figure which, when broken down, includes structural material, plate and pipe; is that right?

A. Yes, sir.

Q. When you took Consolidated's production, that gave a much larger percentage of Consolidated's total than its percentage of structural would have been if you had taken that separately?

A. Yes, that is correct.

224-769 Q. Now, you also included in the Consolidated figures in 1937, 1,300,000 or so—I think it is around 1,300,000—of materials which are not even included in the census figures, is that so?

A. Are you referring to the miscellaneous material?

Q. Yes.

A. I couldn't tell whether those are included in those three census classifications unless I had an exact description of what Consolidated terms miscellaneous.

Q. They aren't classed under either structural plate or pipe, are they?

A. Consolidated doesn't class them under those terms.

Q. Do you know whether the census does or not?

A. I couldn't unless you told me what miscellaneous constitutes.

Q. At any rate, to the extent that those are not included in the census figures, then you were comparing something in the Con-

solidated's figures that wasn't even in the census figures to whatever extent they weren't included?

A. Yes, to whatever extent those would turn out, not had in those industries.

Q. As I understand you, you made up that table without discovering that so far as pipe was concerned, you were comparing Consolidated's figures of 6,000,000 to see what part that was of the industry with 3,000,000 of the census figures 224—770 as the total for the industry, weren't you?

A. Yes.

Q. And you didn't discover that until it was called to your attention this morning; is that right?

A. That is correct.

Mr. MILLER. That is all.

Mr. WRIGHT. If the Court please, we had previously waived cross-examination of the representative of Consolidated who prepared this exhibit that was referred to, which contained these 1937 and 1939 figures. In view of this development, I would like, however, to examine him to see if we can't find out what the basis for his classifications were; whether he did have accurate records for those periods. I think he is here in the courtroom, and I would appreciate that opportunity.

The COURT. Suppose we arrive at it by a process of elimination. Let us get through with this witness.

Mr. WRIGHT. We are through with this witness.

224—771 Mr. WRIGHT. I had previously when this Exhibit 60 went in waived cross-examination of the man who prepared it on the theory that there could be no question about the accuracy of the classifications there. It now appears that there may be some question as to those 1937 and 1939 figures, and I would now like to examine him on the table.

The COURT. I don't know whether there has been any question as to the accuracy of those figures.

Mr. WRIGHT. I say there is an obvious discrepancy between the figures that were reported here and the figures reported for census purposes, and it may be that we can—

The COURT. Is there any objection to recalling the witness?

Mr. MILLER. I have no objection. I point out it doesn't make the slightest bit of difference. A tabulation based on such an error as is disclosed is of no value. I don't care how it is explained. But he is at liberty to explain it.

Mr. WRIGHT. We are after what the facts are; that is what we are primarily interested in.

The COURT. If you have no objection we will recall the witness.

Mr. ALFRED WRIGHT. We have no objection.

224—772 **LESLIE E. KELLY**, called as a witness, being duly sworn, testified as follows:

**The COURT.** Is this witness called on behalf of the plaintiff?

**Mr. WRIGHT.** I assume I have the privilege of cross-examining him on the table.

**The COURT.** The reporter just asked me whether to list him as a witness called on behalf of the plaintiff or defendant.

**Mr. WRIGHT.** I think he should properly be listed as defendant's witness under cross-examination.

**Mr. ALFRED WRIGHT.** We haven't called this witness, your Honor, and if he is called at all it must be as a witness for the plaintiff.

**Mr. WRIGHT.** The facts are as I stated them that when the table was first offered we waived cross-examination on the assumption that there was no question about the figures. I would now like to avail myself of the privilege that would ordinarily be mine to cross-examine on the figures particularly when this was accepted, of course, without the introduction of any supporting or original data at all.

**The COURT.** I understand. The only question I am interested in is whether they are presenting the witness subject to your call.

224—773 **Mr. MORRIS.** Isn't it true—I am not very familiar with the figures and in fact I know practically nothing about them, but is it not true that had we not waived the formal proof of the figures a witness would have had to have been called in order to introduce the figures in evidence?

**The COURT.** That is right.

**Mr. WRIGHT.** We waived their calling him. The figures are nevertheless his figures. I assume they are, and the figures would have had to have been produced by the calling of this witness had the Government not waived that. Isn't he actually being cross-examined on his own figures and isn't he therefore the defendant's witness?

**Mr. MILLER.** We have rested our case. I don't think it makes much difference what you call this witness. He is there on the witness stand.

**The COURT.** The only reason is so the reporter can list him.

**Mr. MILLER.** I think they are calling him. Our case is closed. He is not called as a part of our case, but we don't care what he is called.

**Mr. WRIGHT.** How the reporter lists him is wholly immaterial. The serious question is whether we examine him on cross-examination or as our witness.

Mr. ALFRED WRIGHT. I just wanted to make sure about the rules of examination under which this witness is to be questioned. We haven't called him. Our case is closed. The plaintiff is now calling this witness, and to my mind he cannot be examined under the rules referring to cross-examination. The witness' testimony will be binding on the plaintiff as he gets it.

Mr. WRIGHT. I might say had this discrepancy in the census figures which were submitted to counsel here at the pretrial conference last June 4 been called to our attention at any time before today we obviously would have cross-examined this gentleman on these figures at the time this defendants' Exhibit 60 were offered.

Mr. MORRIS. Isn't it also true as a matter of procedure whether this witness could be called at this time or not is in your Honor's discretion in the order of proof in the trial? There is no question about that.

I mean, as counsel has stated, they have closed their case. In any event, if they objected to our calling this witness at this time unless we call him as our witness, your Honor would probably not allow us to call him. In any event, it is in your Honor discretion whether he can be called or not at this time.

Now the fact is the subject matter of what he is going to testify to, as I understand it, is something that they introduced in evidence and could only have introduced through a witness.

224-775 The Court. Doesn't Rule 43 cover it?

"A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions \* \* \*"

Is there any doubt that he can be examined in that manner?

Mr. MILLER. I don't think so.

Mr. ALFRED WRIGHT. I don't think so. I don't think he is hostile to the United States.

Direct examination by Mr. WRIGHT:

Q. What is your name?

A. Leslie E. Kelly.

Q. Where do you live?

A. Los Angeles, California.

Q. What is your occupation?

A. I am an accountant, Assistant to the Financial Vice President of Consolidated Steel Corporation.

Q. You are the gentleman who prepared the figures here which are reflected on this Defendants' Exhibit 60?

A. Yes, I did.

Q. I call your attention to the figures in the first 224-776 column there under the year 1937. Those figures relating to pipe, those were largely production figures of the Western Pipe & Steel Company, were they, at that time?

A. As I recall it they were at that time.

Q. And Western Pipe & Steel is a company that was not acquired by the company you work for, Consolidated, until December of 1945; is that correct?

A. That is correct.

Q. Did you have when you prepared this data for 1937 as to the Western Pipe & Steel production or bookings here original records in your possession from which you could determine that?

A. Not in my own possession; no.

Q. What kind of records did you have?

A. The manner in which this exhibit was arrived at I think I can best explain by explaining the way in which the accounting of Consolidated Steel Corporation and its subsidiaries was kept, if it is not too long an explanation.

Q. Go ahead.

A. The records of Western Pipe & Steel Corporation are maintained in San Francisco. Our main office is in Los Angeles. At the time we took over Western Pipe & Steel Company we made no changes—essential changes in the organization whatsoever and continued the same personnel. Therefore I may say that the personnel who were employed by Western Pipe & Steel Company at that time prepared this tabulation for Western Pipe 224-777 & Steel Company from which I made my interrogatory answer.

Q. You got it from them?

A. That is correct.

Q. Do you know what kind of records they had for back in 1937?

A. No, sir; not to my knowledge.

Q. You did not make any effort to find out what if any records they did have which would enable them to distribute the tonnage there actually among the various classifications that are shown?

A. Yes; I do. I interrogated them on the point.

Q. What did they have to say about that?

A. They had maintained at Western Pipe & Steel Company for a number of years a monthly report which they call a production or product classification report. Those reports were still available to them and they used those old reports made up at the time that the reports were then in effect in 1937 in order to obtain the new figures for me.

Q. Did the reports have product classifications on them in the same form that you have them in the table there?

A. Not in exactly the same form. You will note, for example, this is essentially the product classification of Consolidated Steel Corporation. We had on our records these break-downs; they didn't. Therefore in making up these figures in order to get comparable figures for all companies I gave them our product break-down and they took their figures and segregated them into our product classifications.

Now, they already had in their classifications a classification shown as pipe. However, that pipe classification included heavy pipe, light pipe, well casing, and culvert pipe. In order that we might set out comparable figures for heavy pipe and light pipe which is of the type that Consolidated produced—we never produced any culvert pipe—I had them break out those other two categories of well casing and culvert pipe, which you will note in the interrogatory appear only on Western.

224-779 Q. Yes. Now, you had, I suppose, no occasion to make any investigation, or did you investigate as to what, if any, census report had been made in that period by that company or your company?

A. No, I didn't; not at the time these figures were prepared.

Q. Can you give us any explanation for the apparent discrepancy there between the census and the figures in your exhibit there for 1937 and 1939 in the pipe classifications?

A. No, sir; I cannot. I have not seen the census reports that were prepared by the Western Pipe & Steel or copies of them.

I had them look in their files, tried to find them, and they searched for a long period of time and up until the time I came East for this trial they hadn't found them.

Mr. WRIGHT. I think that is all.

Mr. ALFRED WRIGHT. No further questions.

Mr. MILLER. The whole point, comparing 6,000,000 with 3,000,000 for the purpose of finding out a percentage, the six as of the industry, and then adding 1,300,000 miscellaneous, that is not even included in the base. You are bound to get a distorted percentage however it came about.

Mr. WRIGHT. I don't care to argue the matter. I just wanted to be sure that we developed for the record all of the data that we could in this apparent discrepancy.

224-780

*Colloquy*

I think that closes our case, your Honor.

The COURT. Are you through on both sides, gentlemen?

Mr. ALFRED WRIGHT. Yes.

Mr. MILLER. I think it is for your Honor to decide what will best suit your Honor's convenience in the way of the submission of the case. Of course, your Honor has already perceived, or must have perceived, that time is very important for both of the defendants, the principal defendants. Each, of course, has different reasons, but the matter of paramount importance in this case is to have a right decision, and therefore, we wish to accommodate ourselves in the way of either oral argument or submission of briefs to what will best suit your Honor's convenience. We hope—from my standpoint—I see no purpose in an oral argument.

I assume your Honor would like to have briefs submitted.

The COURT. Yes, sir.

Mr. MILLER. Then I should think that it might be wise to fix a time for the submission of briefs, and it seems to me that ought to be done as early as possible.

I take it the usual order is for the plaintiff to submit its brief and for the defendants to answer and then for the plaintiff to put in any reply that it desires.

The COURT. That is the normal method. I don't care 224—781 whether you adopt that method or whether you exchange them simultaneously.

Mr. MILLER. We want to adopt the one that would be most expeditious.

Mr. WRIGHT. Insofar as briefs and arguments are concerned, your Honor, any sort of arrangement that is agreeable to you is agreeable to us.

The COURT. The only value I would get for an oral argument would be the pleasure of having it.

Mr. MILLER. It would be a very great pleasure to address your Honor, but I think we could dispense with that in order to facilitate the disposition of the case.

Mr. WRIGHT. May I make this suggestion with reference to oral argument? Suppose we go ahead and submit the briefs and then, of course, if your Honor, after examining the briefs, decides that you want to hear oral argument, let us know and we will give it to you and if you don't want it, let us know as to that also.

The COURT. What I should like is a brief with the proposed findings of fact and conclusions of law, your suggestions for those.

Mr. MILLER. Yes.

Mr. WRIGHT. Yes.

The COURT. And I assume, Mr. Wright, that you have no objection to the order; that you will file them first and 224—782 that they will answer and you will have a competent and adequate time to file your reply.

Mr. WRIGHT. That sounds entirely reasonable with me.

The COURT. Now, then, what time?

Mr. WRIGHT. I should say 30 days for our opening brief.

The COURT. Yours is 30 days.

Mr. ALFRED WRIGHT. We had very much hoped, your Honor, that we might have all the briefs in before it became necessary for you to go away. I don't know what your Honor's engagements are. I assumed you had a vacation planned.

The COURT. I was hoping I was going to.

Mr. MILLER. I wouldn't let it be interfered with. There are some things more important than getting an immediate decision.

Mr. ALFRED WRIGHT. Each of us could get our briefs in earlier than 30 days.

Mr. MILLER. We can have our brief in in a week. Of course, I understand Mr. Wright has other matters and so do we all, but this is within a pretty narrow compass and it ought not to require any 30 days to present a brief. I am willing to present our brief—

The COURT. In the same length of time that he is allowed?

224—783 Mr. MILLER. Yes, but I am willing, instead of going through the procedure of his brief and ours and then his, I am willing to file without waiting for his brief, a brief within 10 days, if he will do the same.

Mr. ALFRED WRIGHT. That will be satisfactory.

Mr. WRIGHT. That is not possible for us, if the Court please. We, of course, would be delighted to have the Government's brief in 10 days, but we still would not be able to get out our main brief. There is an enormous amount of material here to assemble and present the factual arrangement of that. We haven't even got copies at the moment of some of the exhibits that have gone in here.

The COURT. Is 30 days the shortest time?

Mr. WRIGHT. Yes, that, your honor, is the shortest time we could get a main brief in.

The COURT. Is there very much difference between you? Say if it took them two weeks and you had two weeks in answering, it would come pretty close to the time.

Mr. MILLER. I will file a brief within five days after we get his.

Mr. ALFRED WRIGHT. We are perfectly willing to exchange briefs at a period 10 days from now without waiting for plaintiff to file his brief.

The COURT. You can't exchange briefs unless he has drawn it.

224—784 Mr. ALFRED WRIGHT. I assumed if he could do it, we could do the same thing.

Mr. MILLER. Isn't two weeks enough to exchange briefs?

Mr. WRIGHT. I thought I made myself clear on that. It is not possible for us, with the staff we have, to get a brief ready and to get it printed within a period of less than 30 days. That is very rapid time for us.

The COURT. I don't think the two weeks is going to save you anything, anyhow. Do you expect to get a decision before I even contemplate a vacation?

Mr. MILLER. I had hoped so, your Honor, but it doesn't look so. A matter of costs. The important thing is that your Honor should have this submitted in the way that it would suit your own schedule and your own convenience, and I have said all I care to say.

The COURT. I feel this way, Governor, very clearly, that if Mr. Wright thinks 30 days is essential for the proper presentation of their case—I want the case of the Government presented in a manner which Mr. Wright thinks is a proper presentation—I don't propose to shorten it to such an extent that Mr. Wright would later feel that he was so crowded that he didn't properly present his case.

Mr. MILLER. We will file our brief within 10 days after we get his.

224—785 The COURT. You will have 15 days after the filing of the defendants' brief.

Mr. MILLER. Why not give him ten?

The COURT. I understand the Government works a little slower.

Mr. WRIGHT. I can get you a copy, but our printing problem is such that we have to get a copy to the printer a week or 10 days before we can get a printed brief.

The COURT. Governor, may I ask you a question? If you were willing to exchange briefs at the expiration of 30 days we would save 10 days.

Mr. MILLER. We will do that.

The COURT. Each of you will have a chance to reply to those anyhow. In 30 days each shall exchange their briefs and file them and 15 days for reply briefs, if that is satisfactory.

Mr. MILLER. I think it would be just as well to keep 30 days. We will take 15 days to answer and they take 15 to reply. We won't save anything.

The COURT. That will include the briefs and the findings of fact and conclusions of law.

Mr. ALFRED WRIGHT. We won't oral presentation unless your Honor notifies us of the fact.

The COURT. That is right, after I get the briefs. The hearing is adjourned.

(At this point the hearing was adjourned.)

This agreement made and entered into, as of the 14th day of December, 1946, by and between (1) Consolidated Steel Corporation, a corporation organized and existing under the laws of the State of California (hereinafter sometimes referred to as "Consolidated of California"), Western Pipe & Steel Company of California (hereinafter sometimes referred to as "New Western Pipe"), The Steel Tank and Pipe Company of California, a corporation organized and existing under the laws of the State of California (hereinafter sometimes referred to as "Steel Tank"), Consolidated Shipyards, Inc., a corporation organized and existing under the laws of the State of California (hereinafter sometimes referred to as "Consolidated Shipyards"), and Consolidated Steel Corporation of Texas, a corporation organized and existing under the laws of the State of Texas (hereinafter sometimes referred to as "Consolidated of Texas"); (which said five corporations are hereinafter sometimes collectively referred to as the "Sellers"), and (2) Columbia Steel Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Buyer"), witnesseth:

Whereas, the Sellers desire to sell, and the Buyer desires to purchase, certain of the business, property and assets of the Sellers as hereinafter provided;

Now, therefore, for and in consideration of the sum of One Dollar (\$1.00) by the Buyer to the Sellers in hand paid, the receipt of which is hereby acknowledged, and the terms, covenants and conditions hereinafter set forth, the parties hereto do covenant and agree as follows, to wit:

1. The Sellers represent to the Buyer as follows:

(1) New Western Pipe, Steel Tank, Consolidated Shipyards and Consolidated of Texas are wholly owned subsidiaries of Consolidated of California, and the accounts of the Sellers have for some time been consolidated;

(2) The assets of Western Pipe & Steel Company of California, a California corporation (hereinafter sometimes referred to as "Old Western Pipe"), including the capital stock of Steel Tank and of Western Tank Car Company hereinafter referred to, were acquired by Consolidated of California as of the close of business on December 15, 1945, and the corporate name of Old Western Pipe was changed to "Western Pipe Company," and such assets, subject to changes since acquisition, are now a part of the assets of Consolidated of California or New Western Pipe, and the business formerly conducted by Old Western Pipe is now conducted by Consolidated of California or New Western Pipe;

(3) Consolidated of California owns all of the capital stock of Philippine Consolidated Steel Corporation, a Philippine corporation, and its investments in and advances to said corporation as of August 31, 1946, aggregated \$131,330.54, and Consolidated of California may make further advances to said corporation prior to the day of the closing of this transaction; and, to the best of the Sellers' knowledge, the liabilities of said corporation, including its capital stock liability, do not exceed its assets;

787 (4) Consolidated of California owns one-half of the capital stock of Western Tank Car Company, a California corporation, and its investments in and advances to said corporation as of August 31, 1946, aggregated \$32,644.27, and Consolidated of California may make further advances to said corporation prior to the day of the closing of this transaction, including approximately \$200,000 to cover one-half of the estimated cost of certain additional plant facilities to be acquired or installed by said corporation near Colton, California; and, to the best of the Sellers' knowledge, the net worth of said corporation as of August 31, 1946, is fairly reflected in "Exhibit B" hereto attached;

(5) The Sellers own and operate steel fabricating plants located, respectively, in Los Angeles County (Maywood Plant) and at Vernon, Berkeley, Fresno, and Taft, California, at Phoenix, Arizona, and at Orange, Texas;

(6) At South Francisco, California, Consolidated of California owns or leases the land on which the facilities hereinafter in this subdivision (6) referred to are located, and on said land there are certain steel fabricating and shipbuilding facilities, some of which are owned by Consolidated of California or New Western Pipe and some of which are owned by the Government of the United States, or its agencies, subject to the terms of a Facilities Contract between Consolidated of California and United States Maritime Commission, designated as Contract No. MCc-1950, and on said land there are also located certain facilities acquired or installed under, and subject to the terms of, an Emergency Plant Facilities Contract between Consolidated of California and the Navy Department, designated as Contract N0d-1780;

(7) Consolidated of California owns and operates a shipbuilding and ship repair yard at Newport Beach, California;

(8) Consolidated of California owns land at Orange, Texas, on which are located certain facilities installed under, and subject to the terms of, a Facilities Contract between Consolidated of California and the Navy Department, designated as Contract N0bs-396;

(9) Consolidated of California holds certain items of Government-owned facilities at its Vernon plant installed under, and subject to the terms of, a contract between said corporation and the Navy Department, designated as Contract NObs-39; and

(10) The Sellers operate or control, or heretofore have operated or controlled, certain other shipyards owned by agencies of the Government of the United States or others, and there may be located thereat or in the vicinity thereof certain equipment, tools and supplies owned by the Sellers:

2. The Sellers agree to sell, and the Buyer agrees to buy, certain business, property and assets of the Sellers, namely, the "transfer assets" hereinafter defined, and the business of the Sellers relating to the transfer assets as a going concern (including any trademarks of the Sellers relating to the transfer assets and the right to use the corporate name of any one of the Sellers, or any abbreviation thereof, in the conduct of the Buyer's business).

788 There has been furnished to the Buyer by the Sellers a copy of the letter dated November 29, 1946, from Messrs. Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, Los Angeles, California, to the Sellers, and its attachments, namely, the tentative consolidated statement of income and expense, of the Sellers, with supporting schedules, for their fiscal year ended August 31, 1946, and the tentative consolidated balance sheet of the Sellers as of the close of business on August 31, 1946.

A copy of said letter and its enclosures is hereto attached and marked "Exhibit A". The Sellers have advised the Buyer as follows: The accounts of Philippine Consolidated Steel Corporation are not consolidated with the accounts of the Sellers as indicated in Exhibit A; on the contrary, investments in and advances to Philippine Consolidated Steel Corporation, as well as any advances to the joint venturers hereinafter mentioned, are included in "Investments, at cost, and advances to affiliates" on said balance sheet included in Exhibit A.

The Sellers and the Buyer have mutually agreed that the value of the fixed assets of the Sellers as of August 31, 1946, was \$8,293,319. The fixed assets include not only the assets shown on Exhibit A, but also fixed assets acquired from Old Western Pipe on December 15, 1945, as aforesaid, the depreciated book value of which, as shown on the books of said corporation as of said date, was \$2,573,579; if such assets, subject to disposals and assuming no other capital changes, had continued to be held by Old Western Pipe to August 31, 1946, and depreciation had been taken thereon computed at the rates and on the basis customarily followed by Old Western Pipe to and including August 31, 1946, the depreciated

book value thereof as of August 31, 1946, would have been approximately \$2,294,879.

The Sellers represent and warrant that the officers of the Sellers know of no material changes which adversely affect the value of the business to be transferred to the Buyer as in this agreement provided or the transfer assets, except such as may have resulted in the ordinary course of business, and that no one or more of the Sellers have, since August 31, 1946, entered into any commitments or substantial contracts adversely affecting the transfer assets except those entered into in the ordinary course of business.

The assets to be retained by the Sellers are hereinafter sometimes referred to as the "retained assets." All the other business, property and assets of the Sellers on the closing day are hereinafter sometimes referred to as the "transfer assets." The parties hereto have also agreed that the Sellers will use their best endeavors also to cause to be transferred to the Buyer, (a) the assets of, subject to all the liabilities of, Philippine Consolidated Steel Corporation, (b) the proportion of the assets of Western Tank Car Company represented by the capital stock of said corporation held by Consolidated of California, subject to the same proportion of the liabilities of, said corporation, and (c) certain advances hereinafter referred to; and in the event the Sellers shall be able to make such transfers, such assets shall be included in the transfer assets subject to liabilities as aforesaid, and this agreement shall be interpreted accordingly.

The phrase "Government" contracts" as used in this agreement shall mean all contracts entered into by or on behalf of any of the Sellers with the Government of the United States, or any agency thereof.

The assets to be retained by the Sellers at the closing of this transaction are:

(1) Cash (except cash in employees' war savings bonds account);

(2) Bonds, notes or other securities issued by the Government of the United States;

(3) All other securities;

(4) Accounts and notes receivable;

789 (5) All claims for tax refunds;

(6) All contracts not necessary or appropriate for the operation by the Buyer of the business and assets heretofore operated by the Sellers and to be transferred to the Buyer; all contracts relating solely to the retained assets and all Government contracts except contracts Nos. MCc-1950, NOd-1780 and NObs-396 above referred to; and all claims under Government contracts retained as aforesaid, and; as to said contracts Nos. MCc-1950, NOd-1780 and NObs-396, all amounts to which the Sellers, or any

of them, may be or may become entitled thereunder in connection with work performed prior to or on the closing day;

(7) Inventories of materials purchased under or allocated to any of the Government contracts retained by the Sellers and any work in process related to any of such contracts;

(8) Insurance and prepaid expenses relating to insurance, and also any dividends, refunds or other recoveries to which the Sellers will or may become entitled under any such insurance; and

(9) Claims against any persons not relating to the transfer assets and claims relating to the transfer assets the value of which claims is not covered by the prices paid hereunder by the Buyer for the transfer assets.

The transfer assets to be transferred to the Buyer at the closing of this transaction include, but are not limited to, the following items:

(1) Fixed assets, which, for the purposes of this agreement, shall be considered to include:

Land and interests in land and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, and the use, possession, claims and demands of any nature whatsoever of the Sellers, as well at law as in equity, of, in and to the same or any parcel thereof—inclusive of all leases and leasehold estates, easements, licenses and other rights of whatever nature or character now owned by the Sellers, or any of them, or which they, or any of them, shall own on the closing day, whether or not appurtenant to or used in connection with any of said land and interests therein; and inclusive of all right, title and interest of the Sellers, or any of them, now or as of the closing day, in, to or under franchises, permits and ordinances of whatsoever nature or character relating to or appurtenant to any of said land and interests therein; and inclusive of all right, title and interest of the Sellers, or any of them, now or as of the closing day, in the roads, streets, ways, alleyways and passages running through under or over, and all privileges, liberties, immunities, hereditaments, and appurtenances whatsoever belonging or in any wise appertaining to, any of said lands and interests therein; and inclusive of all riparian rights appurtenant to any real estate or leaseholds now owned or held by the Sellers, or any of them, or in which they, or any of them, have or may have a beneficial interest now or as of the closing day, and all water, 790 water courses, water rights and rights of flowage touching upon, adjacent to or flowing over or appurtenant to any of said land and interests therein now or as of the closing day;

The plant, works, buildings, structures, installations, fixtures, improvements, betterments, and additions, of every description

whatsoever, owned by Sellers, or any of them, or which they, or any of them, shall own on the closing day;

All machinery and equipment, tools and appliances of every kind and description owned by the Sellers, or any of them, or which they, or any of them, shall own on the closing day;

All transportation equipment;

All office furniture, fixtures and supplies;

All plans, drawings (including, but not limited to, original tracings), and other engineering data;

(2) Inventories of materials (as in Paragraph 3 hereof defined), other than inventories retained by the Sellers as provided in subdivision (7), of retained assets;

(3) (a) The completed portion of uncompleted sales contracts covering work to be performed by the Sellers (other than contracts retained by the Sellers as stated in subdivision (6) of retained assets), including work in process other than that retained by the Sellers as stated in subdivision (7) of retained assets, less progress billings;

(b) The aforesaid contracts Nos. MCc-1950, NOd-1780 and NObs-396, except all amounts to which the Sellers, or any of them, may be or may become entitled thereunder in connection with work performed on or prior to the closing day;

(c) The uncompleted portion of uncompleted purchase orders and sales orders; and the uncompleted portion of other contracts and commitments necessary or appropriate for the operation by the Buyer of the business and assets heretofore operated by the Sellers and to be transferred to the Buyer, including contracts and commitments for additional fixed assets;

(4) Good will;

(5) The assets of, subject to all the liabilities of, and advances to, Philippine Consolidated Steel Corporation; the proportion of the assets of Western Tank Car Company represented by the capital stock of said Corporation held by Consolidated of California, subject to the same proportion of the liabilities of said corporation, and advances to said Corporation;

(6) Miscellaneous:

(a) Prepayments relating to operations after the closing, other than those relating to insurance;

(b) Patents, patent applications, patent licenses and interests in inventions;

(c) Employees' saving bonds and bond accounts;

791 (d) Deposits, including but not limited to, those made in connection with utility services and bids; and

(7) Claims against any persons relating to the transfer assets the value of which claims is covered by the price paid hereunder by the Buyer.

The closing of this transaction shall be at the office of A. G. Roach at the Maywood, California, plant of the Sellers at 11 o'clock A. M., P. S. T., March 31, 1947, or at such other time or place as may be mutually agreed upon. The closing shall be effective as of the close of business on the day of closing. All property taxes shall be prorated as of 12 o'clock midnight on the day of closing, on the basis of the taxes levied and assessed for the year 1947. All bills for water, gas and electrical energy and all charges for utility services, as well as all rentals and royalties, shall also be prorated as of the day of closing.

At the closing the Sellers will grant and convey, or cause to be granted and conveyed, to the Buyer (or as to any item of property, at the request of the Buyer, to the nominee of the Buyer) by good and sufficient deeds of general warranty, in fee simple, good and marketable title to all of the real estate included in the transfer assets, free and clear of all liens, other than the liens of local ad valorem taxes, and free and clear of all other charges or encumbrances over or against said real estate which would interfere with the normal and customary operation of the plants comprised in the transfer assets; and the Sellers shall, at the closing, execute and deliver to the Buyer proper and sufficient bills of sale and assignments of all of the other transfer assets, free and clear of all liens.

If by agreement of the parties the day of closing shall be accelerated or extended, the obligations of the parties hereto to be otherwise performed on specific dates shall be accelerated or extended to the same extent that the closing date is accelerated or extended, unless otherwise mutually agreed.

3. The respective prices to be paid by the Buyer to the Sellers for the business, property and assets to be sold by the Sellers and to be purchased by the Buyer are as follows:

(1) For fixed assets—\$8,293,319, (a) increased by the full amount of any properly capitalizable expenditures made since August 31, 1946, and (i) as to items which have been or may be acquired after August 31, 1946, and which have been or may be disposed of, abandoned or dismantled on or before the closing day, decreased by one hundred per cent of the depreciated book value thereof at the date of the disposition, abandonment or dismantlement, (ii) as to items which were acquired on or prior to August 31, 1946, and which have been or which may be disposed of, abandoned or dismantled on or before the closing day, decreased by fifty per cent of the original cost of any fixed assets other than those acquired from Old Western Pipe, disposed of or abandoned or dismantled, and, as to items acquired from Old Western Pipe, decreased by fifty per cent of the undepreciated book value thereof

as shown by the books of Old Western Pipe at December 15, 1945, disposed of or abandoned or dismantled subsequent to August 31, 1946, less, in each case, agreed salvage value of assets abandoned or dismantled; (b) decreased for depreciation, since August 31, 1946, in the case of assets other than those acquired from Old Western Pipe, stated on the books of the Sellers in accordance with their established methods of accounting; and (c) decreased in an amount equal to the amount of depreciation that would have been accrued in the books of Old Western Pipe, from August 31, 1946, to and including the day of closing, on the assets acquired by Consolidated of California from Old Western Pipe if such assets had continued to be held by Old Western Pipe to and including the day of closing and old Western Pipe's established rates and methods of depreciation on and prior to December 15, 1945, had been continued to and including the day of closing;

(2) For inventories of materials, (as hereinafter in this Paragraph 3 defined), other than inventories retained by the Sellers as provided in subdivision (7) of retained assets—an amount equal to cost stated in accordance with Sellers' established methods of evaluating inventories for their annual published consolidated financial statements, except that as to inventories of materials acquired from Old Western Pipe and not included in the data upon which said annual published Consolidated statements were based, and on hand on the day of closing, the Buyer shall pay the Sellers therefor an amount equal to the book value thereof on the books of Old Western Pipe as of December 15, 1945, subject to such adjustments for deterioration and obsolescence as may be mutually agreed between the parties hereto. If the parties cannot agree upon such adjustments or if, in the event of such failure to agree upon such adjustments, the parties cannot agree upon a third party to determine such adjustments, all question with respect thereto shall be decided by an arbiter designated by the President of the American Institute of Steel Construction;

(3) (a) For the completed portion of uncompleted sales contracts (other than contracts retained by the Sellers as stated in subdivision (6) of retained assets), including work in process other than that retained by the Sellers as stated in subdivision (7) of retained assets, less progress billings—

(i) as to each fixed-price contract, a percentage of the contract price equal to the percentage of completion of the contract on the day of closing;

(ii) as to each cost-plus-a-fixed-fee contract, all costs incurred by the Sellers to and including the day of closing, less progress billings, and a percentage of the fixed fee equal to the percentage of completion of the contract on the day of closing;

(iii) as to each cost-plus-a-percentage-of-cost contract, all costs incurred by the Sellers to and including the day of closing, less progress billings, and all unbilled fees earned by the Sellers to and including the day of closing;

(iv) as to each time-and-materials contract, all unbilled amounts earned by the Sellers thereunder on account of work performed to and including the day of closing;

793 The percentage of completion of each fixed-price contract and each cost-plus-a-fixed-fee contract as of the day of closing shall be determined on the basis of the costs incurred by the Sellers prior to the day of closing (computed separately for material, labor and overhead), as compared with the total costs of performing such contract. In the case of pipe line contracts, however, the value of steel stock not actually constituting work in process on the day of closing shall not be taken into account in determining the percentage of completion on the closing day, but such materials shall be treated as inventory materials included in the transfer assets. In the case of any such contract not completed on or prior to the expiration of six months following the day of closing, the total costs of its performance shall be deemed to be the sum of the aggregate costs incurred prior to the expiration of such six-month period and the estimated amount of such costs for the completion thereof as may be mutually agreed upon. If the parties hereto cannot mutually agree upon the amount to be estimated as above provided, the question of such amount shall be referred to a representative of the American Institute of Steel Construction or to a member of such Institute, as may be agreed upon by the parties hereto, and, in case the parties hereto fail to agree upon such representative, to a representative of said Institute or member thereof as shall be designated by the President of said Institute, and the decision of the representative so agreed upon or designated shall be binding upon the parties hereto.

The parties hereto will, however, attempt to arrive at a lump-sum amount to be paid by the Buyer to the Sellers for the transfer assets falling within this subdivision, and in case a lump-sum shall be agreed upon such transfer assets shall be paid for at the lump-sum figure instead of for a consideration calculated as hereinabove in this subdivision provided.

(b) For the aforesaid contracts Nos. MCc-1950, NOd-1780 and NObs-396—the assumption of obligations and liabilities thereunder accruing after the closing;

(c) For the uncompleted portion of uncompleted purchase orders and sales orders; and the uncompleted portion of other contracts and commitments necessary or appropriate for the operation by the Buyer of the business and assets heretofore operated

by the Sellers and to be transferred by the Buyer, including contracts and commitments for additional fixed assets—the assumption thereof.

(4) For good will—\$1.00;

(5) For the assets of, subject to all the liabilities of, and advances to, Philippine Consolidated Steel Corporation; the proportion of the assets of Western Tank Car Company represented by the capital stock of said corporation held by Consolidated of California subject to the same proportion of the liabilities of the said corporation, and advances to said corporation; and advances to the joint venturers hereinafter referred to—(a) the assumption of the obligations and liabilities of Philippine Consolidated Steel Corporation and of the proportion of the obligations and liabilities of Western Tank Car Company as the capital stock of said corporation held by Consolidated of California bears to the whole and (b); the payment of an amount equal to the sum of (i) the investment of Consolidated of California in said stock of

794 Philippine Consolidated Steel Corporation as of the day of closing and an amount equal to one-half of the net worth of Western Tank Car Company as of the day of closing, (ii) an amount equal to the fees (reduced by one-fourteenth of such fees and by the amount of Philippine income tax applicable thereto less the amount of any credit which the Buyer shall be entitled to take against its United States income and excess profits taxes with respect to said Philippine income taxes) earned on contracts by Philippine Consolidated Steel Corporation as of the day of closing, and (iii) the amount of such advances as of the day of closing;

(6) For miscellaneous assets:

(a) For prepayments relating to operations after the closing, other than those relating to insurance—the aggregate of the amounts actually prepaid as of the day of closing;

(b) For patents, patent applications, patent licenses and interests in inventions—\$1.00 (book value);

(c) For employees' savings bonds and bond accounts—the assumption of the Sellers' obligations with respect thereto; and

(d) For deposits, including, but not limited to, those made in connection with utility services and bids—the amount thereof actually on deposit on the day of closing; and

(7) For claims against any persons relating to the transfer assets the value of which claims is covered by the price paid hereunder by the Buyer—such payment.

The Buyer shall pay the purchase prices of the assets referred to in the foregoing subdivisions (1), (2), (3), (4), (5), (6), and (7), as follows:

For the assets referred to in subdivision (1)—\$8,293,319 on the day of closing, provided that not later than May 31, 1947, the Sellers or the Buyer, as the case may be, will pay to the other party or parties the amount that will be due to the other party or parties as a result of the adjustments hereinabove provided for;

For the assets referred to in subdivision (2)—on June 15, 1947;

For the assets referred to in subdivision (3) (a)—at the end of seven months after the closing date;

For the assets referred to in subdivision (4)—at the closing;

For the assets referred to in subdivision (5)—within sixty days after the day of closing;

For the assets referred to in subdivision (6) (a)—within thirty days after the day of closing;

For the assets referred to in subdivision (6) (b)—at the closing;

For the assets referred to in subdivision (6) (d)—within thirty days after the day of closing;

795 With respect to the assets referred to in subdivisions (3) (b), (3) (c), (6) (c) and (7)—the Buyer's assumption of obligations will be by assumption thereof at the closing.

If the Sellers shall so request, the Buyer will at the closing deliver to the Sellers the sum of \$5,000,000, or seventy-five per cent of the aggregate book values (as shown on the books of the Sellers as of the last day of the last month for which such figures are available) of the assets referred to in subdivisions (2) and (3) (a) of transfer assets, whichever is lesser, as an advance payment against the purchase prices of said assets.

"Inventories" as used in this agreement shall mean materials (including steel stock, not in process of fabrication, acquired for pipe line contracts), merchandise, supplies, stores, spare parts (not included in fixed assets), and other tangible items located in Sellers' plants, warehouses or offices, or elsewhere, including inventories of goods in transit with respect to which the purchase price has been paid or accrued by the Sellers, or any of them, as of the day of closing. A physical inventory of such items shall be taken under the joint supervision of the Sellers and the Buyer, and all such items shall be included in or excluded from inventory on exactly the same principles as were followed by the Sellers in the computation of inventory account balances for recording on their books as at August 31, 1946. The Sellers have represented to the Buyer that the Sellers' established methods of evaluating inventories for their annual published consolidated financial statements include the making of appropriate adjustments for defects, deterioration and obsolescence found in items of such inventories.

At the Maywood plant of the Sellers there have been installed facilities to be used in the performance of pipe line contracts,

and in connection with such installation the Sellers have made, or will make, expenditures aggregating approximately \$700,000. As of August 31, 1946, these facilities were not included in fixed assets on the books of the Sellers and are not covered by the aforesaid amount of \$8,293,319. For the purpose of determining the amount to be paid for said facilities, fifty per cent of such expenditures shall be deemed to represent fixed assets and the remaining fifty per cent thereof shall be deemed to be prepaid expense. As to such fifty per cent deemed to represent fixed assets, the Buyer will pay the Sellers therefor the amount thereof, adjusted to reflect the depreciation thereon that would have been taken to and including the day of closing if the same had, from the time of installation, been treated as fixed assets on the books of the Sellers and had been depreciated in accordance with the rates and methods applied by the Sellers to facilities of the same general character. As to the other fifty per cent of such expenditures deemed to be prepaid expense, the amount thereof will be prorated to the pipe line contracts in existence as of the day of closing.

The respective purchase prices referred to in this Paragraph 3 shall be paid by certified checks or voucher drafts payable to the order of Consolidated of California, and such checks or voucher drafts shall be delivered to the Treasurer, or any Assistant Treasurer, of Consolidated Steel Corporation or to any officer of said corporation authorized by resolution of its Board of Directors to receive the same. Any such payment shall be considered payment pursuant to this agreement; it being the intention of the parties hereto that Consolidated of California shall receive for all of the Sellers all payments to be made by the Buyer to the Sellers hereunder and shall account to Western Pipe, Steel and Tank, Consolidated Shipyards and Consolidated of Texas, as may be determined by and between the Sellers, and that the Buyer shall have no liability with respect to any such accounting.

796 4. The Buyer will also, if and to the extent the Sellers shall request, complete the performance of any or all of the Sellers' Government contracts; and the Sellers will pay to the Buyer for such completion, (a) such amounts as the Sellers shall receive as reimbursement under each of such contracts with respect to such work so performed by the Buyer, and (b) that proportion of the fee and any bonus paid to the Sellers under each of such contracts as the cost of the work performed by the Buyer bears to the total costs incurred in the performance of such contract with respect to which such fee or bonus is payable.

5. The Sellers agree that at the closing they will transfer and deliver to the Buyer all of the records, books of account, muniments of title and any and all other records, data and written in-

information pertinent or relevant to the business of the Sellers relating to the transfer assets, including plant records, personnel records, cost records, inventory records, sales records, accounts receivable records to the extent necessary for the agency for the collection of accounts receivable by the Buyer for the Sellers hereinafter provided for, ledger sheets (active and inactive) and customers order and invoice files, except only books and records pertaining solely to the internal affairs of the Sellers (including, but not limited to, stock books, stock ledgers and minute books) and records relating solely to items of retained assets or liabilities. The books and records retained by the Sellers, except those relating to the internal affairs of the Sellers, and the books and records transferred to the Buyer shall thereafter be made available, for inspection by the other party or parties at any time during regular business hours for a period of seven years, and such other party or parties may make excerpts or copies thereof therefrom as they or it may deem desirable, at its or their own expense.

The Buyer will cooperate with the Sellers to the end that the evidence contained in the books and records to be transferred to the Buyer which may be required by the Sellers, or any of them, in connection with tax suits and other suits or proceedings which may be brought by or against the Sellers, or any of them, will be made available to the Sellers, or any of them, for such use, either by the delivery of the original records to the Sellers, or any of them, or by the furnishing to the Sellers, or any of them, of copies of such records, as may be required, the expense of furnishing any such copies to be for the account of the Sellers.

Further, the Buyer will cooperate with the Sellers, or any of them, to the end that employees of the Sellers, or any of them, who after the closing shall be employees of the Buyer and whose testimony or assistance may be required by the Sellers, or any of them, in connection with any claims which may be made by or brought against the Sellers, or any of them, will be made available to the Sellers, or any of them, at the expense of the Sellers, to the extent that such can be reasonably done without interfering with the operations of the Buyer.

For the period expiring December 31, 1948, the Buyer will furnish to the Sellers reasonable space and facilities in the offices acquired from the Sellers at Maywood and South San Francisco, California, and Orange, Texas, to be occupied by the personnel of the Sellers who will be engaged in matters (a) connected with the performance of this agreement by the Sellers, (b) the operations of the Sellers prior to the closing, (c) the prosecution of the business of the Sellers relating to the retained assets, and (d) the liquidation of the affairs of and the dissolution of the Sellers, if

the Sellers shall determine to liquidate and dissolve. For the period of seven months following the day of closing the Buyer will reimburse the Sellers for such part of the aggregate reasonable payroll of the employees (other than officers) of the Sellers engaged in such activities as is applicable to such work. For a period of seven years following the day of closing, the Buyer will also furnish to the Sellers reasonable space at the South San Francisco, Maywood, and Orange plants for the storage and preservation of such of the records of the Sellers not to be transferred to the Buyer hereunder as the Sellers may designate, with no charge to the Sellers for such storage space.

6. The Sellers covenant and agree to execute and deliver at the closing appropriate instruments of transfer to the Buyer of all of the rights of each of the Sellers under any agreement of any nature with third parties to be transferred to the Buyer as aforesaid, including, but not by way of limitation, switching and side track agreements with railroads and others and agreements concerning the furnishing of water, gas, electricity and other services, and, where deemed necessary or desirable by the Buyer, to do all things within the power of any one or more of the Sellers to procure the consents of third parties to the assignment of said rights to the Buyer. Provided, however, that the Buyer shall not be obligated to accept the transfer to it of any agreement of which the Buyer was not specifically advised prior to or on the date of the closing. Any agreement or item of property, tangible or intangible, of one of the classes of property falling within the transfer assets, to which the Sellers, or any of them, are apparently still a party, or which the Sellers, or any of them, apparently own, as disclosed by the records of the Sellers, or any of them, and which the Sellers, or any of them, claim belongs to or should have been or should be transferred to a third party shall not be so transferred until after the Sellers shall have fully advised the Buyer of the facts relating to such agreement or item of property and shall then be so transferred only with the Buyer's consent.

As to any contract relating both to the retained assets and the transfer assets, the benefits thereof shall accrue to the Sellers and the Buyer as their respective interests may appear.

7. The Sellers covenant that, promptly upon the written request of the Buyer at or after the closing, the Sellers will execute and deliver to the Buyer any and all other proper deeds, assignments, conveyances, powers of attorney, assurances and other written instruments as may reasonably be required by the Buyer for better assuring, assigning, transferring, conveying and confirming unto the Buyer all of the property, assets and business hereby agreed to be conveyed and transferred or for aiding and assisting

in collecting or reducing to possession any of said property, assets and business.

8. The Buyer shall not, except as herein otherwise specifically provided, directly or indirectly, by virtue of any of the provisions of this agreement, become liable for any of the debts, obligations, liabilities, undertakings, agreements, or commitments of the Sellers of any nature whatsoever, including, but not limited to, obligations to employees in respect of employment contracts or arrangements, pensions, or otherwise, and including, but not by way of limitation, any obligations under the Fair Labor Standards Act of 1938, as amended, or other statutes of the United States or regulations or orders of the Government of the United States or of any agency thereof.

798 The Buyer has inspected the contract dated October 16, 1946, between Philippine Consolidated Steel Corporation and Philippine Industrial Equipment Company, joint venturers, and the Navy Department of the United States covering ship repair work to be performed in the area of the Philippine Islands and the guaranty of Consolidated of California guaranteeing the performance by said joint venturers of their obligations under said contract and agrees to indemnify and save harmless Consolidated of California of, from and against all loss, costs, damage and liability that may be suffered or incurred by Consolidated of California as a result of said guaranty. The Buyer has also examined the Letter of Intent dated November 2, 1946, issued by the Quartermaster Corps of the United States Army to said joint venturers covering the performance of certain ship repair work in the area of the Philippine Islands and the guaranty of Consolidated of California of the performance by said joint venturers of their obligations under said Letter of Intent, and the Buyer likewise agrees to indemnify and save harmless Consolidated of California of, from and against all loss, costs, damage and liability that may be suffered or incurred by Consolidated of California as a result of said guaranty.

It is understood between the parties hereto that the profits realized from certain contracts performed by the Sellers, or any of them, and to be transferred to the Buyer, may be subject to renegotiation by the Government of the United States or any of its interested departments pursuant to the provisions of the Renegotiation Act of 1943, or other provision of law, or pursuant to contractual provisions to that effect. As between the parties hereto, the Sellers shall bear and shall indemnify the Buyer against all loss, damage and expense arising out of any renegotiation in so far as it involves profits which have been or may be accrued from such business prior to the close of business on the closing day, and an obligation to

make refund of any of such profits, and the Buyer shall bear and shall indemnify the Sellers against all loss, damage and expense arising out of any renegotiation in so far as it involves profits which may accrue from such business subsequent to the closing date and all obligation to make refund of such profits accruing to the Buyer.

9. Not later than ten days after the closing the Sellers will deliver to the Buyer a statement of all of the Sellers' accounts receivable which the Sellers desire the Buyer to collect as agent of the Sellers. The buyer undertakes to process the collection of said accounts receivable, on behalf of the Sellers, in the same manner as the Buyer would process the collection of its own accounts receivable, but without any liability for failure to prosecute the collection thereof or to collect the same, as long as the Buyer acts in good faith in the premises. The buyer shall not be obligated in any matter to institute or prosecute legal proceedings for the collection of any such accounts receivable, and with respect to any of such accounts receivable the Buyer shall at all times have the right to withdraw from the agency and to notify the Sellers that all actions with respect to the same after receipt of such notice must be undertaken by the Sellers.

The Buyer is authorized to endorse in the name of the Sellers drafts, orders, notes and other instruments of any kind, character or description, payable to the Sellers and relating to such accounts receivable to the extent deemed advisable by the Buyer to enable it to perform the duties of such agency. Whenever the Buyer shall receive any remittance or payment of any such accounts receivable it shall hold such remittance for the sale and exclusive benefit and account of the Sellers and shall as promptly as possible after receiving any payment on account of such accounts receivable pay to the Sellers the monies so collected.

799 The Buyer shall not be entitled to any reimbursements of cost or compensation for its services rendered in acting as such agent.

10. Each of the Sellers shall assign and deliver to the Buyer at the closing such Seller's right, title and interest in and to the uncompleted portion of all unfilled purchase contracts or orders of such Seller (other than contracts and orders to be retained by the Sellers as aforesaid), and, in the event any unfilled or partially unfilled contracts or orders may not be by their terms assignable, shall do all things within such Seller's power to arrange for the transfer thereof to the Buyer. The Seller shall deliver to the Buyer at the closing of this transaction all correspondence and other documents with respect to such purchase orders and shall furnish to the Buyer all information reasonably requested with

respect thereto. The Buyer shall assume the obligations of the Sellers for the payment of the unpaid or the unpaid balance of the purchase price of the materials or products covered by said orders, in so far as such obligations relate to the uncompleted portion thereof. At the closing each of the Sellers shall deliver to the Buyer a statement with respect to such orders, showing the name of the vendor, such Seller's order number and the commodity, and within ten days after the closing such Seller shall deliver to the Buyer a statement with respect to such orders showing the date upon which each order was placed, the name of the firm with whom the order was placed, a description of the materials or products covered by the order, estimated quantities and the respective purchase prices.

11. Each of the Sellers shall assign and deliver to the Buyer at the closing of this transaction the uncompleted portion of all of such Seller's unfilled sales orders and contracts and inquiries, and subcontracts, other than contracts and orders retained by the Sellers as above provided, on hand at such date and, in the event that the uncompleted portion of any such orders or contracts to be assigned to the Buyer may not be by their terms assignable and the other parties thereto shall not consent to the assignment thereof to the Buyer, such Seller and the Sellers will do all things within their power to arrange for the completion of such contracts or orders by the Buyer on terms satisfactory to all interested parties.

The Buyer will assume at the closing, and will thereafter perform all the obligations of the Sellers with respect to the uncompleted portion of such contracts, orders and subcontracts, assigned to the Buyer under this agreement (except as otherwise provided herein with respect to the renegotiation of the profits of the Sellers), Provided, however, that in no event shall the Buyer assume any obligations of the Sellers, or any of them, arising out of deliveries of goods, wares or merchandise made by the Sellers prior to the closing, including, but not limited to, any claims on account of any allegedly defective goods, wares, or merchandise delivered by the Sellers pursuant to any such contract or order, or otherwise.

12. Notwithstanding any of the other provisions of this agreement, the consummation of the transaction herein described shall be conditioned upon (1) the securing by or on behalf of the Buyer, prior to the time of the closing, of the transfer to the Buyer of preference ratings, allotments or other rights given by any agency of the Government of the United States to the Sellers, or any of them, and relating to the transfer assets, and any rights of the Sellers, or any of them, under any directive of any agency of the Government of the United States relating to the transfer assets

or assurances satisfactory to the Buyer that such transfer to it will be made, or the securing by the Buyer of similar ratings, allotments or rights, and (2) there being at the time of the closing no governmental orders, directives or regulations which will prohibit the Buyer from conducting upon the plant premises of the Sellers to be transferred to the Buyer a business or businesses similar to that or those now conducted thereon by the Sellers.

The Buyer shall take all action reasonably required to secure such transfers or assurances, or such ratings, allotments or rights in its own name, and also all action that may be required to be taken on its part in order that it may be permitted and able to conduct such business or businesses as aforesaid, and the Sellers shall take all actions and sign all instruments reasonably requested by the Buyer in connection therewith.

In the event that prior to the time fixed for the closing the Buyer shall notify the Sellers in writing that the Buyer has not been able to secure such transfers or assurances, or such ratings, allotments or rights in its own name, or that the Buyer will not be permitted or able to conduct said business or businesses for the reasons aforesaid, then this agreement shall terminate. In the event the Buyer shall not give such notice to the Sellers, the above conditions shall be deemed to have been met.

13. The Sellers warrant to the Buyer as follows:

(a) Each of the Sellers is a duly organized and existing corporation and has corporate power and authority to enter into this agreement and to sell and convey to the Buyer the business, property and assets of such Seller as provided in this agreement.

(b) The execution and delivery of this agreement does not violate any agreement, indenture or other instrument to which the Sellers, or any of them, are or is a party except that the Sellers are obligated under certain contracts which by their terms are not assignable and except as hereinafter in this Paragraph 13 otherwise stated.

(c) As of the date of this agreement the fixed assets of the Sellers comprised in the transfer assets remain in the aggregate substantially as they were on August 31, 1946, except for changes made in the ordinary course of business and except that fixed asset additions have been made and are being made aggregating approximately \$2,000,000, and except that said amount does not include the cost of facilities acquired or to be acquired in connection with pipe line contracts or the cost of acquiring Government-owned facilities installed under Contract MCc-1950, if such facilities are acquired.

(d) Compensation to management of the Sellers at the date of this agreement is not substantially different from such compensation paid in August, 1946.

Consolidated of California has a Credit Agreement dated May 1, 1946, with twenty-seven banks represented by Security-First National Bank of Los Angeles, California, Agent, a copy of which has been furnished to the Buyer, which provides that, while any credit thereunder is in use or available and until all of the obligations of Consolidated of California thereunder are discharged, Consolidated of California will not, without the prior written consent of said Agent, sell, lease or transfer, or permit any subsidiary to sell, lease or transfer, all or a substantial part of its assets or business, or any assets necessary to the conduct of its business. Consolidated of California will on or before the day of closing do all things necessary to relieve itself of said prohibition of said Credit Agreement, or will procure from the other parties to said Credit Agreement a waiver of said prohibition.

14. Each of the Sellers represents to the Buyer that such Seller will change its corporate name to a corporate name approved by the Buyer not later than the day following the day of closing.

15. The Sellers agree to deliver to the Buyer on or before February 15, 1947, by delivering the same to the respective persons hereinafter designated, full and complete title insurance policies and abstracts of title relating to the real estate of the Sellers to be acquired by the Buyer, extended to some day in February 1947.

The title insurance policies and abstracts of title relating to the California and Arizona real estate shall be delivered to Buyer's Secretary at Buyer's office in the Russ Building, 235 Montgomery Street, San Francisco 6, California.

The title insurance policies and abstracts of title relating to the Texas real estate shall be delivered to Wharton E. Wcome, Niels Esperson Building, Houston 2, Texas.

The title insurance policies and abstracts of title relating to the Illinois real estate shall be delivered to R. C. Stevenson, 208 South LaSalle Street, Chicago 4, Illinois.

At the closing of this transaction the Sellers will cause to be made to the Buyer by Counsel for the Sellers a written report disclosing any changes in said titles which have occurred since the respective dates of the title insurance policies and abstracts of title so to be delivered to the Buyer on February 15, 1947. If said report discloses any substantial change in the title to any of said real estate made without the approval of the Buyer (except the lien of local taxes and assessments not delinquent), the Buyer shall have the right by notice to that effect to terminate and cancel this agreement in its entirety with the same force and effect as though it had never been entered into.

16. From and after the execution and delivery of this agreement and until the closing, the Sellers:

(a) will conduct and carry on in the normal and usual manner the business to be acquired by the Buyer hereunder;

(b) will consult with and keep the Buyer advised of the business affairs of the Sellers, and each of them, in so far as they relate to the transfer assets, to the extent that the Buyer may require;

(c) will enter in no unusual transactions of any kind and will not increase any salary or compensation of any officers or of any monthly salaried employees of said business whose salaries are in excess of \$6,000. per year, without the written consent of the Buyer first had and obtained;

(d) will give and grant to the Buyer, its officers, attorneys, agents and representatives, the right and authority to inspect, investigate, audit and appraise the books, records, properties, accounts, business affairs, and assets of the Sellers, and each of them, in so far as they relate to the transfer assets, to the extent that the Buyer may determine;

802 (e) will maintain, keep in good repair, and keep insured, as at the present time, all the fixed assets of or used in the said business;

(f) will not acquire any additional fixed assets, except fixed assets for the acquisition of which the Sellers, or one or more of them, is already committed, or of which the Sellers have advised the Buyer, without prior written consent of the Buyer; will not dispose of, abandon or dismantle fixed assets at any one location of a value in excess of \$25,000 without the consent of the Buyer; and will not remove anything of value, part of the transfer assets, from the premises on which such business is conducted except in the usual course of business, without such written consent; and

(g) will keep, do and perform any and all other matters not herein specifically stated, necessary and requisite to be kept and performed by the Sellers, or any of them, or which may be required by the Buyer, to the end that this agreement may be kept and performed faithfully and diligently in accordance with its true intent.

17. At the closing the Sellers will deliver or cause to be delivered to the Buyer the following:

(1) A certificate signed by A. G. Roach, setting forth, as of the closing date

(a) that there has been no material change which would adversely affect the value of the fixed assets from that which obtained on August 31, 1946, except in the ordinary course of business;

(b) that since August 31, 1946, the transfer assets have not been substantially adversely affected in any way as the result of

any fire, earthquake, explosion, accident, flood, riot, or acts of God or the public enemy; and

(c) that there are no actions, suits or proceedings at law, or in equity, pending, or to the knowledge of the Sellers, or any of them, threatened, which would adversely affect the transfer assets.

If, for any reason, the Sellers, or any of them, fail or shall be unable to deliver said certificate, then, this agreement may, at the option of the Buyer, be terminated and cancelled in its entirety, with the same force and effect as though it had never been entered into.

(2) The opinions of attorneys at law, as hereinafter set forth,

(a) to the effect that this agreement has been duly executed and delivered by the Sellers, and each of them, and constitutes a legal, binding and enforceable obligation of the Sellers, and each of them, in accordance with its terms; and

(b) as to the due execution, delivery and legal effectiveness of the deeds, bills of sale, assignments and other documents  
803 to be delivered by the Sellers to the Buyer at the closing and that they are legal, valid, binding and enforceable documents in accordance with their terms.

Such opinions shall be the opinions of Alfred Wright, Esq., attorney at law, of Los Angeles, California, except that such opinions may be the opinions of such other attorneys at law as shall be approved by the Buyer.

18. The Sellers, and each of them, will, in connection with the transaction covered by this agreement, do all things specifically requested by the Buyer in order that there may be compliance in all respects with those provisions of the statutes of California, Arizona, Texas and Illinois commonly referred to as the Bulk Sales Acts. In the event of the failure of the Sellers, or any of them, to comply with the provisions of this paragraph, this agreement shall be void and of no effect.

19. There are no agreements, contracts, promises, representations, or statements between the parties hereto except as contained in this agreement, and this agreement shall constitute the entire and whole contract between the parties hereto. Each of the parties hereto agrees that any and all covenants and warranties of such party herein made shall, to the extent that they shall not be fully satisfied at or prior to the closing, survive the execution and delivery of deeds, bills of sale, assignments and other documents to be delivered by such party at the closing, and shall thereafter continue to survive until fully satisfied.

20. Each of Western Pipe, Steel Tank, Consolidated Shipyards and Consolidated of Texas hereby appoints Consolidated of California its attorney-in-fact to act for it in all matters to which this

agreement relates, but such delegation shall not forbid the taking of any action by Western Pipe or Steel Tank or Consolidated Shipyards or Consolidated of Texas, without the intervention of said attorney in fact, to the extent that any one of Western Pipe, Steel Tank, Consolidated Shipyards or Consolidated of Texas may select or as the Buyer may request. The giving by the Buyer of notice under this agreement or on account thereof to Consolidated of California shall be deemed the giving of notice to each of the Sellers. Any notice which the Sellers, or any of them, or the Buyer may desire to give to any of the other parties under this agreement or on account of any of the provisions thereof shall be deemed to have been properly given when placed in the United States registered mail in a prepaid envelope and addressed, if intended for the Sellers, or any of them, to A. G. Roach, c/o Consolidated Steel Corporation, P. O. Box 6880, East Los Angeles Branch, Los Angeles, California, and addressed, if intended for the Buyer, to the Buyer, c/o M. D. Howell, Room 1501, 436 Seventh Avenue, Pittsburgh 30, Pennsylvania, as the case may be, or to such other person and address as either Consolidated of California or the Buyer shall designate in writing to the other.

21. This agreement shall be effective from the date thereof, provided, however, that the obtaining of such approvals of shareholders as may be required by the laws of the respective states in which the Sellers are incorporated shall be a condition precedent to the obligation of the Sellers to sell, convey or transfer the transfer assets as herein provided. The Sellers will as promptly as possible submit this contract to their respective shareholders for their approval or disapproval and will cause to be duly complied with all requirements, including requirements of the Securities

and Exchange Commission, with respect to, or the securing  
804 of, proxies to vote the stock of the respective Sellers at the aforesaid meetings, that appropriately or legally should be complied with in connection with action relating to such shareholders meetings and anything else appropriate to the consummation of the transaction covered by this agreement or collateral thereto. If the requisite approval of such shareholders is not obtained on or prior to the closing date specified herein (March 31, 1947) or such earlier or later date as may be agreed upon between the parties hereto, none of the parties hereto shall have any further obligation hereunder, and this agreement shall be terminated and cancelled in its entirety with the same force and effect as though it had never been entered into.

22. This agreement shall be binding upon, and shall inure to the benefit, of each of the Sellers and their respective successors, and shall be binding upon, and shall inure to the benefit of, the

Buyer and its successors, but it shall not be assigned by any of the parties hereto without the prior written consent of each of the other parties hereto, except that the Buyer may assign the same to any other subsidiary of United States Steel Corporation, a New Jersey corporation.

In witness whereof, the parties hereto have executed this agreement in six original counterparts the day and year first above written.

CONSOLIDATED STEEL CORPORATION,  
By A. G. ROACH, *President*.  
JOHN M. ROBINSON, Jr., *Secretary*.

Attest:  
C. W. Giegenis,  
*Assistant Secretary*

WESTERN PIPE & STEEL COMPANY OF  
CALIFORNIA,  
By L. W. SLATER, *President*.

Attest:  
JOHN M. ROBINSON, Jr., *Secretary*.

THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,  
By F. S. HOWARD, *Vice-President*.

Attest:  
ALFRED WRIGHT, *Assistant Secretary*.

CONSOLIDATED SHIPYARDS, INC.,  
By A. G. ROACH, *President*.

Attest:  
JOHN M. ROBINSON, Jr., *Secretary*.

CONSOLIDATED STEEL CORPORATION OF  
TEXAS,  
By A. G. ROACH, *President*.

Attest:  
JOHN M. ROBINSON, Jr., *Asst. Secretary*.

COLUMBIA STEEL COMPANY,  
By W. A. ROSS, *President*.

Attest:  
THOMAS ASHLY, *Secretary*.

STATE OF CALIFORNIA,  
*County of Los Angeles, ss:*

On this 16th day of December 1946, before me Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Steel Corporation, a corporation, and John M.

Robinson, Jr., personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

EDNA R. WINTER, *Notary Public.*

806 STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this 16th day of December, 1946, before me Edna R. Winter, a Notary Public in and for said County and State, personally appeared L. N. Slater, personally known to me to be the President of Western Pipe & Steel Company of California, a corporation, and John M. Robinson, Jr., personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation:

In witness whereof, I have hereunto set my hand and official seal.

EDNA R. WINTER, *Notary Public.*

STATE OF CALIFORNIA,  
County of Los Angeles, ss:

On this 16th day of December, 1946, before me Edna R. Winter, a Notary Public in and for said County and State, personally appeared F. S. Howard, personally known to me to be the Vice President of The Steel Tank and Pipe Company of California, a corporation, and acknowledged that as such Vice President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

EDNA R. WINTER, *Notary Public.*

807. STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 16th day of December 1946, before me Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Shipyards, Inc., a corporation, and John M. Robinson, Jr., personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

EDNA R. WINTER, *Notary Public.*

STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this 16th day of December 1946, before me Edna R. Winter, a Notary Public in and for said County and State, personally appeared A. G. Roach, personally known to me to be the President of Consolidated Steel Corporation of Texas, a corporation, and acknowledge that as such President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

EDNA R. WINTER, *Notary Public.*

808 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 14th day of December, 1946, before me Hazel E. Thompson, a Notary Public in and for said County and State, personally appeared W. A. Ross, personally known to me to be the President of Columbia Steel Company, a corporation, and Thomas Ashby,

personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL]

HAZEL E. THOMPSON,  
Notary Public.

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EXHIBIT A

LYBRAND, ROSS BROS. & MONTGOMERY

CERTIFIED PUBLIC ACCOUNTANTS

510 South Spring Street

LOS ANGELES 13

NOVEMBER 29, 1946.

Mr. F. J. KNOEPPFEL,

*Vice-President, Consolidated Steel Corporation,  
5700 South Eastern Avenue, Los Angeles 22, California.*

DEAR SIR: We enclose for your review and comment, four copies of the following tentative financial statements as at August 31, 1946:

Consolidated balance sheet of Consolidated Steel Corporation and wholly owned subsidiaries.

Consolidated statement of surplus of Consolidated Steel Corporation and wholly owned subsidiaries.

Consolidated statement of income of Consolidated Steel Corporation and wholly owned subsidiaries.

Balance sheet of Consolidated Steel Corporation.

We have not completed the preparation of notes to the financial statements as at August 31, 1946, and for the year then ended. However, draft of certain of the contemplated notes are enclosed with the tentative financial statements.

After completion of your review, please return the tentative financial statements together with your comments thereon.

Very truly yours,

(S) LYBRAND, ROSS BROS. & MONTGOMERY.

RAB:mo.  
Enclosures.

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Tentative 11-27-46.

**CONSOLIDATED STEEL CORPORATION (a California corporation) and  
wholly owned subsidiaries**

**Notes to Financial Statements as at August 31, 1946, and for the  
Year Then Ended.**

**A. Principles of consolidation:**

The registrant includes in its consolidated statements its wholly owned subsidiaries:

Consolidated Steel Corporation of Texas.

Consolidated Shipyards, Inc.

Western Pipe & Steel Company of California (since December 15, 1945).

The Steel Tank & Pipe Company of California (since January 1, 1946).

Philippine Consolidated Steel Corporation, in process of organization at August 31, 1946.

Registrant takes up the earnings or losses of its wholly owned subsidiaries as a charge or credit to investment accounts and a credit or charge to income, and credits dividends, when received, to the investment accounts.

**B. Limitations and uncertainties in profit determination:**

**Derivation of income accounts:**

The companies' profits comprise margins on fixed price contracts, fixed fees on certain contracts, and fees based on cost on certain other contracts.

As to margins and fees on contracts in progress, the companies follow the method of recording such profits during the course of construction on the basis of a pro rata of expected contract realization computed according to the estimated extent of completion.

As to performance bonuses on contracts in progress, the companies follow the method of recording delivery bonuses at the time of delivery of individual vessels, and cost-saving bonuses only upon completion of applicable multivessel and ordnance contracts.

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Tentative 11-29-46.

**CONSOLIDATED STEEL CORPORATION (a California corporation) and  
wholly owned subsidiaries**

**Derivation of income accounts:**

The actual margins, fees, and bonuses under any long-term contract cannot be determined until final settlement of the contract is made, and, since many of the construction projects are

not completed in any one accounting period, the amounts recorded on any contract in periods prior to final settlement are necessarily estimates.

Consistent with the companies' regular practice, if determination of profits to August 31, 1946 should thereafter be revised, reflection thereof would be made in statements of income for subsequent periods.

C. Renegotiation of war contracts:

Renegotiation proceedings have been closed for all periods through December 31, 1945 except for a period of four months then ended for registrant and one subsidiary on which final agreement has not been consummated. (Note not completed.)

D. Bank credit:

All notes payable to banks are issued under a bank credit agreement, which, with amendment of September 12, 1946, establishes a credit line of \$7,000,000.00, consisting of a term loan credit of \$3,000,000.00, payable \$300,000.00 on December 31, 1946 and semi-annually thereafter, and revolving credit of \$4,000,000.00 (\$2,000,000.00 outstanding August 31, 1946), payable on or before June 30, 1951.

812 E. Provision for contingencies—note not completed.

F. Redemption of preferred shares—note not completed.

G. Profit arising from liquidation of inventory acquired through purchase of assets, less liabilities of Western Pipe Company (formerly Western Pipe & Steel Company of California). Note not completed.

H. Depreciation and amortization:

The companies provide for depreciation of plant and equipment through annual charges based on rates sufficient to extinguish the cost (except estimated salvage value) at the expiration of the respective estimated useful lives under normal operating hours and maintenance. Additions to normal rates have been used during periods of multishift operations.

Emergency facilities, aggregating approximately \$791,000, have been fully amortized and are included in assets and in allowances for depreciation and amortization.

813 Consolidated Balance sheet as at August 31, 1946

ASSETS

Current:

Cash	\$3,184,067.08
Trade accounts receivable, including approximately \$3,654,000 on facilities and production contracts for governmental departments and agencies	5,744,988.79
Other accounts, notes, and contract receivable	180,875.67
United States Treasury savings notes, series C, at cost, plus accrued interest thereon	101,140.00

## ASSETS—continued

## Current—Continued

Tax refund claims, principally from loss carry-back	\$278,114.41
Completed portion of contracts, unbilled (costs sustained plus profits recorded, Note —, less progress billings)	12,302,825.95
Inventories, principally stock steel and stores, at lower of cost (first in, first out) or replacement market	4,598,259.61
Prepaid items, principally taxes and insurance	333,284.48
Total current assets	26,723,495.99
Employees' savings bond account	93,119.23
Investments, at cost, and advances to affiliates	164,174.81
Properties:	
Land related to operations, at cost	\$717,711.67
Operating plant, equipment, and leasehold improvements, at cost, \$6,086,546.65, less allowances for depreciation, \$2,747,69.59, and amortization, \$519,871.00	2,818,906.06
Patents (at nominal valuation)	1.00
	3,336,618.73
	30,517,408.76

814

## LIABILITIES

## Current:

Notes payable to banks	\$600,000.00
Accounts payable, including accrued items other than taxes	5,262,282.01
Dividend payable October 1, 1946	60,404.25
Taxes, including pay roll, withhold, and federal income and excess profits taxes	5,488,522.80
Total current liabilities	11,411,209.06
Notes payable to banks (Note —)	\$5,000,000.00
Less amount included in current, above	600,000.00
	4,400,000.00
Employees' deposits for purchase of savings bonds	93,119.23
Provision for contingencies	1,100,000.00

## CAPITAL

## Stated capital:

Common shares, no par, nonassessable, authorized 690,000 shares, issued and outstanding 241,617 shares (Note —)	\$5,141,195.00
Earned surplus	8,371,885.47
	13,513,080.47
	30,517,408.76

## 815 Consolidated statement of surplus for the year ended August 31, 1946

Balance August 31, 1945	\$6,159,297.55
Add net income for year	6,469,890.37
	12,629,187.92

## CAPITAL—continued

## Deduct:

Excess of cost of preferred shares acquired and retired prior to July 1, 1946 over applicable stated capital amount	\$56,180.23	
Cost of redemption of preferred shares as at July 1, 1946 (Note —)	3,576,503.65	
Dividends:		
Preferred shares, \$1.31¼ per share	\$141,294.57	
Common shares, \$2.00 per share	483,234.00	
	<u>624,528.57</u>	
		<u>4,257,302.45</u>
Balance August 31, 1946		<u>8,371,885.47</u>

816 Consolidated statement of income for the year ended August 31, 1946  
(Notes A and —)

## Work performed on contracts:

Cost of work performed (including materials furnished by government), plus profit margins and fees (Note —)	\$91,676,870.13	
Cost of work performed:		
Labor, materials (including government furnished), and overhead	\$76,495.37	
Depreciation and amortization of operating plant, machinery, and equipment (Note —)	\$87,140,042.60	
Administrative expense and other costs not charged to government contracts	318,874.23	
	<u>1,758,593.76</u>	
		<u>89,217,510.68</u>
Performance bonuses earned		<u>2,459,359.45</u>
		<u>6,203,038.36</u>
Other income less other expense (including interest)		<u>8,662,397.81</u>
		<u>79,052.56</u>
Income before provision for federal income and excess profits taxes and reduction of provision for contingencies		<u>8,741,450.37</u>
Provision for federal income and excess profits taxes, \$4,309,400.00, less adjustments of prior years, including \$223,600.00 refund claims arising from loss carry-back		<u>4,033,890.00</u>
Income before reduction of provision for contingencies		<u>4,707,650.37</u>
Reduction of provision for contingencies		<u>1,762,240.00</u>
Net income transferred to surplus		<u>6,469,890.37</u>

817

## EXHIBIT B

Western Tank Car Company—Balance sheet—August 31, 1946

## ASSETS

Current		\$50,973.66
Cash	\$10,683.44	
Accounts Receivable	21,543.25	
Accounts Receivable—Other	1,579.35	
Material On Hand	16,227.02	
Work In Process	940.60	
Fixed property		41,457.84
Real Estate	\$30,997.41	
Buildings	9,810.29	
Drainage Facilities	6,335.20	
Tracks	9,614.94	
Machinery and Equipment	10,400.52	
Furniture and Fixtures	599.76	
	67,758.21	
Less: Reserve for Depreciation	26,300.37	
Prepaid expenses		1,144.86
Total assets		93,576.36

## LIABILITIES AND CAPITAL

Current		39,133.06
Reserves		4,104.87
Federal Income Tax 1945	\$2,630.50	
Federal Income Tax 1946	1,474.37	
Capital		25,000.00
Stock Outstanding	\$25,000.00	
Surplus		25,338.43
Earned to December 31, 1945	\$19,792.02	
Profit Current Year	5,546.41	
Total liabilities and capital		93,576.36

UNITED STATES STEEL CORPORATION SUBSIDIARY

General Offices: Russ Building

William A. Ross, President.

SAN FRANCISCO, *January 18, 1947.*

CONSOLIDATED STEEL CORPORATION,  
WESTERN PIPE & STEEL COMPANY OF CALIFORNIA,  
THE STEEL TANK AND PIPE COMPANY OF CALIFORNIA,  
CONSOLIDATED SHIPYARDS, INC.,  
CONSOLIDATED STEEL CORPORATION OF TEXAS,

*P. O. Box 6880, East Los Angeles Branch,  
Los Angeles, California.*

DEAR SIRs: Confirming our oral understanding, it is mutually agreed between yourselves and this company that the agreement dated the 14th day of December 1946, executed by yourselves as Sellers and this company as Buyer, and by the terms of which it is provided you shall sell us certain of your business, properties, and assets, shall be deemed amended and hereby is amended in the following particulars:

1. By striking out the first full paragraph on page 3 and inserting in lieu thereof the following: There has been furnished to the Buyer by the Sellers a copy of the consolidated statement of income and expense of the Sellers for the fiscal year ended August 31, 1946, and a copy of the consolidated balance sheet of the Sellers as at August 31, 1946, copies of which are hereto attached and marked "Exhibit A."

2. By changing the last two lines of subdivision (b) on page 5 to read as follows: the liabilities of said Corporation; and advances to said Corporation; and advances to the joint venturers hereinafter referred to;

819 3. By changing the last two lines on page 6 in subdivision (1) of paragraph 3 to read as follows: dismantled, provided, however, that in the case of the disposition of any land of a value in excess of \$25,000 the decrease in the contract price on account of such disposition shall be in an amount mutually agreed upon between the Sellers and the Buyer prior to such disposition; (b) decreased for depreciation, since August 31, 1946, in the case of assets other than those acquired.

4. By inserting in the next to the last line of subdivision (ii) of paragraph (3). (a) on page 7 after the words "fixed fee" the following: and any bonuses

5. By substituting for the "Exhibit A" attached to the original agreement of December 14, 1946, the "Exhibit A" mentioned in the foregoing amendment to the first full paragraph on page 3 of said original agreement.

Said original agreement shall be deemed to be amended as aforesaid as of the date thereof, to wit: December 14, 1946, and all references thereto shall be deemed to be to the agreement as amended, unless otherwise specified.

If the foregoing properly reflects your understanding of the amendments, kindly so indicate by endorsing your approval on the eight counterparts of this letter.

Very truly yours,

COLUMBIA STEEL COMPANY,  
By W. A. ROSS, *President*.  
By THOMAS ASHLY, *Secretary*.

Attest:

W. R. BEAULIEU, *Assistant Secretary*.

820 Approved and agreed to the 18th day of January 1947.

CONSOLIDATED STEEL CORPORATION,  
By F. J. KNOEPPPEL, *Vice President*.  
By O. I. ALBERA, *Ass't. Secretary*.

Attest:

E. LEFUNDLIN, *Assistant Secretary*.

WESTERN PIPE & STEEL COMPANY OF  
CALIFORNIA,  
By F. S. HOWARD, *Vice President*.

Attest:

L. W. COUTURE, *Secretary*.

THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,  
By F. S. HOWARD, *Vice President*.

Attest:

ALFRED WRIGHT, *Secretary*.

CONSOLIDATED SHIPYARDS, INC.,  
By F. J. KNOEPPPEL, *President*.

Attest:

JOHN M. ROBINSON, Jr., *Secretary*.

CONSOLIDATED STEEL CORPORATION OF  
TEXAS,  
By F. J. KNOEPPPEL, *President*.

Attest:

O. I. ALBERA, *Ass't. Secretary*.

821 The undersigned hereby agree to execute and deliver the attached extension agreement to be dated and made effective as of March 31, 1947, within five days after the entry of an order to be made with reference to the Government's motion for a preliminary injunction in the action entitled "United States vs. Columbia Steel Company, et al." in the District Court of the United States for the District of Delaware, provided such execution and delivery are not prohibited by the Order.

Dated March 31, 1947.

CONSOLIDATED STEEL CORPORATION,  
By \_\_\_\_\_, *President*.  
\_\_\_\_\_, *Secretary*.

Attest: \_\_\_\_\_, *Assistant Secretary*.

WESTERN PIPE & STEEL COMPANY  
OF CALIFORNIA,

By \_\_\_\_\_, *President*.

Attest: \_\_\_\_\_, *Asst. Secretary*.

822

THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,

By \_\_\_\_\_, *Vice President*.

Attest: \_\_\_\_\_, *Assistant Secretary*.

CONSOLIDATED SHIPYARDS, INC.  
By \_\_\_\_\_, *President*.

Attest: \_\_\_\_\_, *Asst. Secretary*.

CONSOLIDATED STEEL CORPORATION  
OF TEXAS,

By \_\_\_\_\_, *Vice President*.

Attest: \_\_\_\_\_, *Asst. Secretary*.

COLUMBIA STEEL COMPANY,  
By \_\_\_\_\_, *President*.

Attest: \_\_\_\_\_, *Secretary*.

823 This Agreement made and entered into as of the 6th day of June 1947, by and between (1) Consolidated Steel Corporation, a corporation organized and existing under the laws of the State of California, Western Pipe & Steel Company of

California, a corporation organized and existing under the laws of the State of California; The Steel Tank and Pipe Company of California, a corporation organized and existing under the laws of the State of California; Consolidated Shipyards, Inc., a corporation organized and existing under the laws of the State of California, and Consolidated Steel Corporation of Texas, a corporation organized and existing under the laws of the State of Texas (which said five corporations are hereinafter sometimes collectively referred to as the "Sellers"), and (2) Columbia Steel Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Buyer"), witnesseth:

Whereas, the parties hereto entered into an agreement dated as of December 14, 1946, which was amended on January 18, 1947 (said agreement as to amended being hereinafter sometimes referred to as "said agreement"), whereby the Sellers agreed to sell, subject to the approval of their respective shareholders, and the Buyer agreed to purchase, certain of the business, property, and assets of the Sellers, upon the terms and conditions therein set out; and

Whereas, the Department of Justice has filed an action to prevent the consummation of said sale and purchase; and

Whereas, counsel for the Sellers and counsel for the Buyer have advised their respective clients that, in their opinion, the transaction is entirely lawful and not within the condemnation of the Sherman Act; and

Whereas, the parties hereto have agreed that it is advisable to postpone the closing of the transaction and, accordingly, that it is desirable to amend certain of the provisions of and to supplement said agreement in the manner and to the extent herein provided:

Now, therefore, in consideration of the premises and of the mutual agreements of the parties hereto herein contained, it is hereby agreed as follows:

1. The closing of the transaction covered by said agreement will be governed by the following provisions (A), (B), (C), (D), and (E) of this Paragraph 1:

(A) If a judgment, decree or order adjudicating that the transaction is not within the condemnation of the Sherman Act or that its consummation is not subject to being enjoined or restrained under said Act shall become final on or prior to December 31, 1948, or if any suit or other proceeding which may be brought under the Sherman Act to enjoin the consummation of the transaction or to determine its lawfulness is dismissed or otherwise terminated prior to said date with prejudice to the party bringing the same,

the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date on which such adjudication shall become final or after the date of such dismissal or termination, or at such other time as shall be mutually agreed upon.

824 (B) If prior to December 31, 1948, the parties hereto shall agree in writing that the question of the lawfulness of the transaction under the Sherman Act has been disposed of to their mutual satisfaction or that there is no deterrent to the closing of the transaction, then the closing day shall be the last day of the calendar month in which shall fall the 60th day after the date of such agreement, or such other time as shall be provided therein or as shall be otherwise agreed upon between the parties hereto.

(C) If none of the events set forth in the foregoing subdivisions (A) and (B) upon which the transactions shall proceed to closing shall occur prior to December 31, 1948, then, either the Sellers or the Buyer shall have the right to terminate said agreement by giving to the other party or parties written notice of termination and upon the giving of such notice said agreement shall terminate and shall be deemed cancelled in its entirety effective as of December 31, 1948, with the same force and effect as if it had never been entered into, and none of the parties thereto shall have any obligation or liability thereunder or by reason thereof or by reason of any action taken thereunder or in relation thereto against any of the other parties thereto.

(D) Irrespective of the provisions of the foregoing subdivisions (A), (B), and (C), if the parties hereto shall at any time prior to January 1, 1949, or thereafter, determine that changed circumstances or other considerations justify the extension of the date of December 31, 1948, referred to in said subdivisions (A), (B), and (C), or the taking of action with respect to the closing of the transaction or in relation to said agreement differing from the action provided for in said subdivisions (A), (B), and (C), and, in the light of such changed circumstances or other considerations, shall mutually agree upon the terms and conditions of a further agreement to be entered into, such further agreement shall supersede the provisions of said subdivisions (A), (B), and (C) to the extent provided for in such further agreement.

(E) Notwithstanding the provisions of the foregoing subdivisions (A), (B), (C), and (D), the closing shall not take place prior to the entry of final judgment by the trial court in the action heretofore commenced by the Department of Justice, or until such action shall have been dismissed, or until the entry of an order by the court relieving the defendants in said action from any obligation to refrain from closing the transaction.

2. Said agreement is hereby amended as hereinafter in this Paragraph 2 provided:

(a) The last paragraph (page 6) of Paragraph 2 is amended to read as follows:

"If by agreement of the parties the day of the closing shall be accelerated or postponed, the respective times for the performance of the obligations of the parties hereto to be otherwise performed on or with relation to specific dates or during specified periods, or otherwise, shall be accelerated or postponed to the same extent that the closing date is accelerated or postponed, except as may be otherwise mutually agreed, and except that the requirements of Paragraph 21 of said agreement shall be deemed to have been complied with by the Sellers if they shall be complied with at any time prior to the closing of the transaction."

825 (b) Subdivision (1) of Paragraph 3 (pages 6-7) is amended to read as follows:

"(1) For fixed assets—\$8,293,319:

(a) increased by the full amount of any properly capitalizable expenditures made since August 31, 1946, and

(b) (i) as to items, other than land, which have been or may be acquired after August 31, 1946, and which have been or may be disposed of, abandoned or dismantled on or before the closing day, decreased by one hundred per cent of the depreciated book value thereof at the date of the disposition, abandonment or dismantlement stated on the books of the Sellers in accordance with their established methods of accounting, less agreed upon salvage value of items abandoned or dismantled and available at plant sites for salvage;

(ii) as to items, other than land, which were acquired on or prior to August 31, 1946, and which have been or which may be disposed of, abandoned or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the original cost of any fixed assets other than those acquired from Old Western Pipe, and, as to items acquired from Old Western Pipe which have been or which may be disposed of, abandoned or dismantled subsequent to August 31, 1946, and on or before the closing day, decreased by fifty per cent of the undepreciated book value thereof as shown by the books of Old Western Pipe at December 15, 1945—less, in each case, agreed salvage value of assets abandoned or dismantled and available at plant sites for salvage;

(iii) as to assets not disposed of, abandoned or dismantled prior to the closing day, decreased for depreciation, since August 31, 1946, in the case of assets other than those acquired from Old

Western Pipe, stated on the books of the Sellers in accordance with their established methods of accounting;

(iv) as to assets not disposed of, abandoned or dismantled prior to the closing day, decreased in an amount equal to the amount of depreciation that would have been accrued on the books of Old Western Pipe since August 31, 1946, on the assets acquired by Consolidated of California from Old Western Pipe if such assets had continued to be held by Old Western Pipe to and including the day of closing and Old Western Pipe's established rates and methods of depreciation on and prior to December 15, 1945, had been continued to and including the day of closing;

826 (v) as to all land reflected on Exhibit A or on the books of Old Western Pipe on December 15, 1945 (and not disposed of prior to August 31, 1946) not owned by the Sellers on the day of closing, decreased by one hundred per cent of the book value thereof as so reflected."

(e) The provision on page 9 relating to the time for payment for prepayments is amended to read as follows:

"For the assets referred to in subdivision (6) (a) within thirty days after the day of closing or within ten (10) days after the amounts of such prepayments are known, whichever is later;"

(d) The provision on page 10 relating to an advance of \$5,000,000 is amended to read as follows:

"If the Sellers shall so request, the Buyer will at the closing deliver to the Sellers the sum of \$5,000,000, or seventy-five percent of the aggregate book values (as shown on the books of the Sellers as of the last day of the last month for which such figures are available) of the assets referred to in subdivisions (2) and (3) (a) of the transfer assets, whichever is less, as an advance payment to be applied first to the purchase price of the assets referred to in subdivision (2), and any balance remaining shall be applied to the purchase price of the assets referred to in subdivision (3) (a)."

(e) The eighth line of the paragraph on page 10 having reference to the facilities installed at the Maywood plant of the Sellers to be used in the performance of pipe line contracts is amended to read as follows: "be paid for said facilities and such other pipe line facilities as may be installed by the Sellers, or any of them, prior to the closing, fifty percent of all expenditures with respect to all such facilities."

(f) Paragraph 4, page 11, is amended by adding at the end thereof the following: "; and the Sellers shall reimburse the Buyer the cost of the performance by the Buyer of any of the obligations of the Sellers, or any of them, under each of such contracts for which reimbursement is not provided by such contract."

(g) Subdivisions (b), (c), (d); and (f) (pages 16 and 17) of Paragraph 16 are amended to read as follows:

"(b) will advise the Buyer of any development in the Sellers' business or affairs which is of a character which may seriously and adversely affect the transfer assets or their operation prior to the closing date;"

"(c) will enter into no unusual transactions without obtaining the written consent of the Buyer, except that this limitation shall have no reference to normal commercial transactions entered into in connection with the general types of business heretofore conducted;"

"(d) promptly after the completion of the Consolidated Statement of Income and Expense of the Sellers for any fiscal year of the Sellers ending on a date prior to December 31, 1948, and the

Consolidated Balance Sheet of the Sellers as at the end of any such fiscal year, will furnish to the Buyer copies of such Statement and Balance Sheet as certified by independent public accountants; moreover, during the period beginning March 15, 1947, and ending on the day of closing, promptly after the issue by the chief financial officer of the Sellers of each monthly consolidated statement of income and expense and monthly balance sheet of the Sellers, in accordance with the established practice of the Sellers, will furnish a copy thereof to the Buyer;"

"(f) (1) will furnish to the Buyer promptly after the first day of January, April, July and October prior to the closing complete information as to each internal or external commitment for improvements or additions to plant or equipment in excess of \$25,000 and also with a statement of aggregate expenditures during each quarter calendar year for improvements or additions to plant or equipment which have been charged to capital account; (2) will not without the written consent of the Buyer acquire any additional fixed assets, except (i) fixed assets for the acquisition of which the Sellers, or one or more of them, are already committed, (ii) fixed assets which have already been approved by the Buyer, (iii) certain Government-owned facilities if it is decided by the Sellers to acquire the same, (iv) other facilities for the production of line pipe referred to in pipe line contracts, and (v) other fixed assets the acquisition and installation cost of which shall not exceed an aggregate amount computed at the rate of \$100,000 for each month, beginning March 1, 1947, and ending on the date of closing; (3) will not without the written consent of the Buyer acquire any fixed assets constituting an operating plant of the person or company from whom the plant is acquired; and (4) will not without the written con-

sent of the Buyer dispose of, abandon or dismantle fixed assets at any one location of a value in excess of \$50,000; and"

3. Notwithstanding the amendments of subdivision (b), (c), (d), and (f) of Paragraph 16 of said agreement made by this agreement, said subdivisions as they were contained in said agreement shall be restored to their original form and in such form shall again become effective sixty (60) days prior to any closing of the proposed transaction and shall then continue in effect until the closing.

4. All the terms and provisions of said agreement shall continue in full force and effect except as changed or modified by this agreement.

828 In witness whereof, the parties hereto have executed this agreement in six original counterparts the day and year first above written.

CONSOLIDATED STEEL CORPORATION,

By \_\_\_\_\_, *President.*

By \_\_\_\_\_, *Secretary.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

WESTERN PIPE & STEEL COMPANY  
OF CALIFORNIA,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

THE STEEL TANK AND PIPE COMPANY  
OF CALIFORNIA,

By \_\_\_\_\_, *Vice President.*

Attest:

\_\_\_\_\_, *Assistant Secretary.*

CONSOLIDATED SHIPYARDS, INC.,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

829

CONSOLIDATED STEEL CORPORATION  
OF TEXAS,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

COLUMBIA STEEL COMPANY,

By \_\_\_\_\_, *President.*

Attest:

\_\_\_\_\_, *Secretary.*

STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of March 1947, before me \_\_\_\_\_  
 a Notary Public in and for said County and State, personally  
 appeared \_\_\_\_\_, personally known to me to be the  
 President of Consolidated Steel Corporation, a corporation,  
 and \_\_\_\_\_ personally known to me to be the Sec-  
 retary of said corporation, and severally acknowledged that as  
 such President and Secretary, they signed and delivered the fore-  
 going instrument for and on behalf of said corporation for the  
 purposes and consideration therein expressed, and caused the  
 corporate seal of said corporation to be affixed thereto, pursuant  
 to authority given by the Board of Directors of said corporation,  
 as their free and voluntary act, and as the free and voluntary act  
 and deed of said corporation.

In witness whereof, I have hereunto set my hand and official  
 seal.

\_\_\_\_\_, *Notary Public.*

830 STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of June, 1947, before me \_\_\_\_\_,  
 a Notary Public in and for said County and State, personally  
 appeared \_\_\_\_\_, personally known to me to be the  
 President of Western Pipe & Steel Company of California, a cor-  
 poration, and \_\_\_\_\_, personally known to me to  
 be the Secretary of said corporation, and severally acknowledged  
 that as such President and Secretary, they signed and delivered  
 the foregoing instrument for and on behalf of said corporation for  
 the purposes and consideration therein expressed, and caused the  
 corporate seal of said corporation to be affixed thereto, pursuant  
 to authority given by the Board of Directors of said corporation,  
 as their free and voluntary act, and as the free and voluntary act  
 and deed of said corporation.

In witness whereof, I have hereunto set my hand and official  
 seal.

\_\_\_\_\_, *Notary Public.*

STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

On this \_\_\_\_\_ day of June, 1947, before me \_\_\_\_\_,  
 a Notary Public in and for said County and State, personally  
 appeared \_\_\_\_\_, personally known to me to be the  
 Vice President of The Steel Tank and Pipe Company of Cali-  
 fornia, a corporation, and acknowledged that as such Vice Presi-

dent, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

On this \_\_\_\_\_ day of June, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Shipyards, Inc., a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

831 STATE OF CALIFORNIA,

County of Los Angeles, ss:

On this \_\_\_\_\_ day of June, 1947, before me \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me to be the President of Consolidated Steel Corporation of Texas, a corporation, and acknowledged that as such President, he signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this \_\_\_\_\_ day of June, 1947, before me \_\_\_\_\_, a Notary Public in and for said City and County and State, personally appeared \_\_\_\_\_ personally known to me to be the President of Columbia Steel Company, a corporation, and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary, they signed and delivered the foregoing instrument for and on behalf of said corporation for the purposes and consideration therein expressed, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_, Notary Public.

832 CAV16 NL

WUX TDS Maywood, Calif., Apr. 15, 1947.

A. L. MULLING,

*U. S. Steel Corporation of Delaware, 436 7th Avenue,  
Pittsburgh, Penn.*

'Re last amendment to agreement of sale. Following additional modifications of language heretofore agreed upon suggested. All of the following modifications relate to subdivision (1) of paragraph 3 of principal agreement which provexxx provides for adjustment of contract price for changes in fixed assets. First subdivision (B) (1); add following phrase at end of subdivision after word accounting quote less agreed upon salvage value unquote. Second, add the following phrase in subdivisions (III) and (IV) in each case before the word decreased quote as to assets not disposed of, abandoned, or dismantled prior to the closing day unquote. Third, delete the entire proviso from the end of subdivision (IV) and insert a semicolon after the word closing. Regret necessity for suggesting these modifications but present language as written has effect of decreasing contract price both for depreciation taken prior to date of disposition of any item of property and also full fifty percent of original cost of assets other than those acquired from Old Western Pipe and as to assets acquired from Old Western Pipe also and similarly a full fifty percent of undepreciated book value here thereof shown on the

books of that company at December 15, 1945. Do not know whether discrepancy referred to is matter of any moment but suggest we take this opportunity to cure defect unless Roger feels that such further modification would result in serious embarrassment or inconvenience in which case we do not desire to insist upon the saexxx same. Please advise.

ROBINSON.

(F) 3 (B) (I) (III) (IV) (IV 15-1945.

833. UNITED STATES STEEL CORPORATION OF DELAWARE  
436 Seventh Ave.  
PITTSBURGH 30, PA.

R. M. Blough, General Solicitor. A. L. Mulling, L. L. Lewis,  
Merrill Russell, General Attorneys.

APRIL 21, 1947.

Mr. J. M. ROBINSON, Jr.,  
*Vice President and Secretary,*  
*Consolidated Steel Corporation.*  
P. O. Box 6880, East Los Angeles Branch,  
Los Angeles 22, California.

DEAR JACK: This is a response to your telegram of April 15, 1947. If an extension agreement were to be entered into pursuant to the agreement of March 31, 1947, between Columbia and Consolidated and the attachment thereto should be changed as hereinafter indicated (Subdivision 2 (b) of said attachment has to do with amendment of Paragraph 3 (1) of the agreement of December 14, 1946; the following changes relate only to subdivision (b) of said Paragraph 3 (1), containing sub-subdivisions (i) to (v), inclusive):

I. At the end of sub-subdivision (i) insert before the semicolon the following: "less agreed upon salvage value of items abandoned or dismantled and available at plant sites for salvage";

II. In sub-subdivision (ii), change the language after the "—" in the last three lines to read "less, in each case, agreed upon salvage value of items abandoned or dismantled and available at plant sites for salvage";

III. Insert at the beginning of sub-subdivision (iii) the language suggested in your telegram;

IV. Insert at the beginning of sub-subdivision (iv) the language suggested in your telegram; in the third, fourth and fifth lines change "from August 31, 1946, to and including the day of closing" to "since August 31, 1946"; strike out the proviso of said

subdivision (last six lines and part of seventh line from end of sub-subdivision);

would such changes meet with your approval?

Yours very truly,

A. L. Mulling,  
A. L. MULLING,  
General Attorney.

ALM:jw

834

MAY 6, 1947.

ARTHUR L. MULLING, Esq.,

General Attorney, United States Steel Corporation of  
Delaware, 436 7th Avenue, Pittsburgh 30, Pennsylvania.

DEAR ARTHUR: In my telegram to you of April 15, 1947, I suggested that the proposed amendment to the Agreement of Sale between Columbia and Consolidated be modified in several particulars. In your letter of April 21, 1947, you suggested certain additional modifications of the proposed amendment.

The modifications of the proposed amendment, as set forth in your letter, are acceptable to Consolidated.

Very sincerely,

J. R. .

cc: F. J. Knoeppel, Maywood contract files. J. M. Robinson,  
Jr.—Maywood.

835 I, John M. Robinson, do hereby certify that I am the Secretary of Consolidated Steel Corporation; that the foregoing documents; to wit:

(1) An Agreement dated as of the 14th day of December 1946, between Consolidated Steel Corporation, Western Pipe & Steel Company of California, The Steel Tank & Pipe Company of California, Consolidated Shipyards, Inc., and Consolidated Steel Corporation of Texas, as Sellers, and Columbia Steel Company, as Buyer.

(2) A letter dated January 18, 1947, addressed by the above named Buyer to the above named Sellers.

(3) An Agreement between the above named Sellers and the above named Buyer, dated March 31, 1947.

(4) An Agreement dated as of the 6th day of June 1947, between the above named Sellers and the above named Buyer.

(5) A telegram dated April 15, 1947, addressed to A. L. Mulling, U. S. Steel Corporation of Delaware, 436 Seventh Avenue, Pittsburgh, Penn., by Robinson.

(6) A letter dated April 21, 1947, addressed to Mr. J. M. Robinson, Jr., Vice President and Secretary Consolidated Steel Corporation, by A. L. Mulling.

(7) A letter dated May 6, 1947, addressed to Arthur L. Mulling, General Attorney U. S. Steel Corporation of Delaware, by J. M. R. (John M. Robinson),

constitute the complete and entire agreement between the said Sellers and the said Buyer relating to the transaction referred to in the Complaint on file in the action entitled "United States of America v. Columbia Steel Company et al., Civil Action No. 1010, in the District Court of the United States for the District of Delaware."

JOHN M. ROBINSON, JR.,

*Secretary of Consolidated Steel Corporation:*

June 16, 1947.

837

*Plaintiff's Exhibit 2*

In the District Court of the United States for the District of Delaware

Civil Action No. 1010.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

ANSWERS OF DEPENDANT, CONSOLIDATED STEEL CORPORATION TO  
PLAINTIFF'S INTERROGATORIES

845

Interrogatory No. 7

What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available?

Answer

The attached schedules show the approximate tonnage and dollar volume of sales by each of the companies named in the answer to Interrogatory 4. None of such companies had any such figures immediately available and in developing them in answer

to this interrogatory and to Interrogatory 9 each company used whatever records were available in addition to estimates and approximations—particularly in connection with tonnage figures. However, the resulting figures set forth in the attached schedules are believed to be reasonably accurate estimates of sales by sales classifications both in dollar volume and tonnage. The following explanatory remarks are to be considered in connection with figures shown for each company:

A. Consolidated Steel Corporation (California).—Prior to August 31, 1940, the corporation closed its accounts on a calendar year basis. A fiscal year of September 1 to August 31 was adopted on August 31, 1940, and thereafter the accounts were closed on August 31 each year. Prior to August 31, 1940, the corporation's accounting (with a few minor exceptions) was on the so-called "completed contract" basis: i. e., sales were not reflected in the income accounts until the job was completed. The corporation's accounting methods were revised at August 31, 1940, and the so-called "accrual basis" of accounting for sales was adopted, under which a portion of the sales price of jobs was taken up in sales accounts each month. Therefore, beginning with the 846 period ended August 31, 1940, it would not have been practicable to attempt to develop tonnage figures for sales. In order that tonnage figures might be developed on a reasonably consistent basis, sales for periods beginning January 1, 1940, were scheduled on a completed contract basis for commercial work. Since war work represented a tremendous volume and was a type of work not normally engaged in by this corporation the sales figures for war work were not converted to a completed contract basis but are stated in accordance with amounts recorded on the company's books during each fiscal period. Except for ship repair activities total tonnage for these classes of work were spread over the separate periods in the ratio that the dollar amounts recorded during each period bear to total dollar volume. Very little steel was used in ship repairs activities and tonnage figures for steel used for such work were not developed.

B. Western Pipe & Steel Company of California.—Prior to December 15, 1945, Consolidated Steel Corporation had no financial interest in this company. On that date the assets of Western Pipe & Steel Company of California were acquired by Consolidated Steel Corporation and a new company of the same name was formed by Consolidated Steel Corporation to continue the business of Western Pipe & Steel Company of California (the old company). Therefore, the figures shown for sales of Western Pipe & Steel Company of California for the periods prior to December 15, 1945, are those of the predecessor (or old)

company. During this period the company's accounting period was the calendar year and revenues from sales were reflected on a completed contract basis except for ship construction and ship repair work which was included in the income accounts on the basis of recorded costs. Upon the formation of the new 847 Western Pipe & Steel Company of California on December 15, 1945, a fiscal year ending August 31 was adopted and the company's accounting for sales was placed on the accrual basis. Therefore, sales figures for the periods prior to December 15, 1945, reflecting sales of the predecessor (or old) company are stated on a completed contract basis. For the period December 16, 1945, to August 31, 1946, the sales figures have been converted to a completed contract basis and reconciliation to the accrual basis shown on the schedule. It should be noted that during the calendar year ending December 31, 1941, the predecessor (or old) company netted against costs \$22,906,967 of shipbuilding work for security reasons during the early stages of the war. This amount has been reinstated in the attached schedules.

C. The Steel Tank and Pipe Company of California.—Prior to December 15, 1945, this company was a wholly owned subsidiary of Western Pipe & Steel Company of California (predecessor (or old) company). On that date the investment of Western Pipe & Steel Company of California in The Steel Tank and Pipe Company was acquired by Consolidated Steel Corporation. The company's accounting period prior to December 15, 1945, was the calendar year. On the latter date a fiscal accounting year ending August 31 was adopted. All sales have been reflected in the company's books on the completed contract basis and no changes in this accounting method was made upon acquisition of the stock of the company by Consolidated Steel Corporation.

D. Consolidated Steel Corporation of Texas.—This company has been on the accrual basis of accounting for sales since its inception. Also a fiscal year ending August 31 was adopted. Therefore, sales figures for this company have been converted 848 to a completed contract basis for each of the fiscal years ending August 31 and a reconciliation made with the sales taken up on the accrual basis.

## Consolidated Steel Corp. (California)

## PART I—APPROXIMATE DOLLAR VOLUME OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	8 months ended 8/31/40	Fiscal year ended 8/31/41	Fiscal year ended 8/31/42	Fiscal year ended 8/31/43	Fiscal year ended 8/31/44	Fiscal year ended 8/31/45	Fiscal year ended 8/31/46
<b>Commercial:</b>										
Mechanical	\$985,779	\$915,017	\$921,179	\$750,351	\$200,037	\$332,104	\$214,761	\$741,269	\$24,578	\$882,756
Structural	3,000,501	957,259	1,321,027	1,414,002	2,793,321	2,681,750	1,063,426	959,546	683,818	1,280,203
Reinforcing	335,596	502,845	650,046	310,007	160,028	88,498				
Plate	957,568	684,413	420,037	402,240	825,971	1,792,846	2,300,534	2,062,246	782,428	493,103
Industrial buildings			58,779	56,901	86,145	129,422	164		8,351	
Oil derricks		41,870	127,021	107,195	48,343	9,466	14,734			
Heavy pipe	980,246	454,030	1,406,813	40,822	466,055	259,897	67,983	42,496		25,020
Boilers	58,051	17,920				191,489				
Combination				116,670	374,644	191,489		22,876		17,888
Boiled tanks	289,046	184,064		16,821	30,027	13,233	9,440			
Small boats						7,913	24,219	142,348	100,918	2,083,172
Miscellaneous	20,794	24,781	26,038	27,983	42,363	91,888	33,223	11,260	56,580	46,184
<b>Total commercial</b>	6,037,561	3,462,819	5,041,814	3,303,982	5,092,234	5,537,506	3,700,912	3,962,379	1,719,823	4,890,326
<b>War work:</b>										
Shipbuilding				2,329,776	19,016,079	109,322,976	279,239,349	303,802,771	281,981,960	53,954,804
Naval ordnance					833,085	7,100,175	10,422,398	11,546,703	6,631,045	56,099
Ship repair									4,970,404	3,035,654
<b>Total war work</b>				2,329,776	19,871,764	116,423,151	289,661,737	375,351,337	283,643,409	59,983,759
<b>Total dollar volume of sales</b>	6,037,561	3,462,819	5,041,814	5,633,758	24,963,998	121,946,657	289,422,649	379,333,916	295,322,232	64,814,085
<b>Reconciling items:</b>										
Less returns and allowances	19,333	11,244	8,876	3,824	10,972	37,954	5,472	10,541	6,796	642
Miscellaneous adjustments to sales	31,671	22,204	13,201	4,066	7,055	102,692	15,098	36,936	75,142	15,417
Change of accounting system to accrual basis, amount of accrual										
pick up at 8/31/40, less ship accrual										
Accrual at start of year on commercial work				1,583,110						
Accrual at close of year on commercial work					1,583,110	3,342,739	1,747,123	2,566,945	881,109	3,698,033
Intercompany eliminations					3,342,739	1,747,123	2,566,945	881,109	3,698,033	4,971,645
					912		128,789	113,306		32,583
<b>Net sales per corporate records</b>	5,986,577	3,440,371	5,010,734	7,217,110	26,730,622	120,230,365	294,350,740	377,787,863	298,177,442	66,134,221

## PART II—APPROXIMATE TONNAGE OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	# months ended 8/31/40	850 Fiscal year ended 8/31/41	Fiscal year ended 8/31/42	Fiscal year ended 8/31/43 *	Fiscal year ended 8/31/44	Fiscal year ended 8/31/45	Fiscal year ended 8/31/46
Commercial:					852					
Mechanical	1,151	1,573	2,717	2,495	546	302	324	965	10	769
Structural	24,139	5,033	9,387	10,542	19,215	12,869	4,221	1,110	3,328	6,063
Reinforcing	3,894	7,044	8,024	4,069	2,239	1,011	3,163	4,315	1,900	1,670
Plate	5,735	2,780	2,212	2,666	4,185	3,311	49	1	22	
Industrial buildings			285	343	428	480	63	315		
Oil derricks		83	984	81	303	49	320	1		
Heavy pipe	10,668	3,830	13,034	206	4,732	2,502		315		80
Boilers	10,168	50						66		98
Combination			175	828	2,248	739	70	257	236	1,176
Potted tanks	1,249	843	115	25	183	43	36	1	15	2
Small tanks				32	81	30	78			
Miscellaneous	297	150	21							
Total commercial	47,331	21,305	36,994	21,962	34,241	24,969	8,293	7,089	5,303	9,837
War work:										
Shipbuilding				2,183	11,754	72,489	181,782	247,719	198,004	37,580
Naval ordnance					245	2,035	2,000	3,408	1,904	
Ship repair										
Total war work				2,183	11,999	74,524	184,782	251,027	200,908	37,580
Total tonnage	47,331	21,305	36,994	24,145	46,240	99,493	193,075	258,107	206,911	47,437

## PART I—APPROXIMATE DOLLAR VOLUME OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	Calendar year 1940	84 Calendar year 1941	Calendar year 1942	Calendar year 1943	Calendar year 1944	Period 1/1/45 to 12/15/45	Period 12/15/45 to 8/31/46	Total
<b>Commercial</b>											
Mechanical	897,763	\$60,534	\$142,282	\$109,483	\$342,438	\$403,121	\$76,141	\$100,907	\$166,288	\$152,453	\$1,717,331
Refinery equipment	112,678	103,978	2,196	84,430	116,191	26,241	11,772	61,562	42,214	5,215	588,496
Structural	373,021	254,469	690,875	304,865	136,139	86,280	50,517	26,453	165,614	80,102	2,138,965
Plate	2,293,477	2,350,586	1,093,870	1,083,237	1,690,741	2,369,541	1,545,173	565,043	1,536,039	703,194	14,721,811
Heavy Pipe	2,080,191	1,282,498	1,610,602	2,025,210	1,646,812	1,388,071	1,982,015	246,982	924,432	698,064	14,708,867
Pipes, Light	186,446	147,717	238,771	272,886	108,588	10,597	4,417	5,178	33,876	74,470	1,083,766
Wall casing	788,777	876,612	710,089	496,488	826,807	223,166	330,233	577,057	619,139	762,858	3,131,307
Culvert pipe	529,183	513,671	344,683	420,172	107,986	329,962	13,368	9,062	45,727	337,115	3,170,229
Small pipe work	351	267,066	437,716	753,769	1,068,351	1,777,646	230,166	230,214	677,538	944,136	6,801,783
Boilers					654,152	4,251,125	19,166	3,441,962	269,857	8,694	11,154,746
Boiled tanks	291,827	247,814	140,864	161,804	267,863	70,391	81,981	616,382	2,038,877	218,464	4,114,777
Grain bins	27,559	6,395	56,219	63,199	43,669	2,916	30,084	14,477	39,547	30,494	4,237,489
Miscellaneous	112,764	136,464	74,328	321,154	1,225,370	1,266,080	2,067,062	2,141,965	3,229,913	528,125	11,460,785
<b>Total commercial</b>	9,412,766	5,076,011	5,264,650	4,766,597	8,475,137	10,094,351	10,267,994	8,162,353	9,747,971	4,544,692	78,200,332
<b>War work</b>											
Shipbuilding											
Ship repair											
Ordinance											
<b>Total war work</b>											
<b>Total dollar volume of sales</b>	9,412,766	5,076,011	5,264,650	4,766,597	8,475,137	10,094,351	10,267,994	8,162,353	9,747,971	4,544,692	78,200,332
<b>Reconciling items:</b>											
Deduct allowances and discounts	210,538	137,132	10,772	6,728	15,467						
Deduct ship construction work netted against costs for security reasons in early stages of war											
Add sales accrual at 8/31/46 on jobs partially completed											
<b>Net sales per corporate records</b>	9,202,228	4,938,879	5,253,877	4,759,869	8,459,680	10,078,884	10,252,524	8,155,625	9,732,204	4,529,976	77,419,547

## Western Pipe and Steel Co. of California—Continued

## PART II—APPROXIMATE TONNAGE OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	Calendar year 1940	Calendar year 1941	Calendar year 1942	Calendar year 1943	Calendar year 1944	Period 1/1/45 to 12/15/45	Period 12/16/45 to 8/31/46	Total
<b>Commercial:</b>											
Mechanical	1,096	625	1,545	1,851	3,442	3,665	654	931	1,842	1,361	16,982
Refinery equipment	1,427	1,040	78	1,965	1,162	3,252	118	616	4,422	51	5,851
Structural	4,050	1,759	3,831	2,300	1,982	21,360	240	192	1,340	665	15,690
Plate	30,127	11,299	10,501	19,855	14,641	21,693	9,857	4,057	15,000	5,762	134,031
Heavy pipe	28,135	11,199	16,908	19,566	9,791	8,200	4,313	3,169	7,445	6,474	125,370
Pipe, light	1,706	1,352	2,185	2,645	9,971	97	37	72	294	681	10,038
Well casing	5,513	3,637	4,787	3,645	3,622	1,457	2,025	3,985	4,350	5,199	40,168
Curved pipe	3,198	3,933	2,085	2,582	10,039	15,316	2,109	1,969	5,655	1,965	18,629
Spinal plate work	2,894	3,144	3,097	7,081	6,640	19,336	31,385	25,215	2,697	7,556	59,442
Boilers	2,302	1,824	983	1,276	2,003	34	205	4,341	21,115	77	55,941
Boiled tanks	184	55	389	477	2,293	8	265	89	3,358	1,322	35,876
Grain bins	1,538	1,300	685	2,061	12,235	11,281	18,190	5,979	10,198	3,140	68,817
Miscellaneous											
<b>Total commercial</b>	81,898	40,298	47,563	64,300	71,359	84,186	70,350	51,473	71,095	34,653	617,195
<b>War work:</b>											
Shipbuilding					27,300	66,461	102,259	106,738	33,661	10,814	350,233
Ship repair									233		233
Ordnance									2,300	1,123	3,423
<b>Total war work</b>					27,300	66,461	102,259	106,738	36,294	11,937	353,979
<b>Total tonnage</b>	81,898	40,298	47,563	64,300	98,659	150,647	172,609	161,211	107,379	46,590	971,174
Deduct ship construction work netted against costs for security reasons in early stages of war					27,000						
<b>Net tonnage per corporate records</b>	81,898	40,298	47,563	64,300	71,359	150,647	172,609	161,211	107,379	46,590	943,874

## The Steel Tank &amp; Pipe Co. of California

## PART I—APPROXIMATE DOLLAR VOLUME OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	Calendar year 1940	Calendar year 1941	Calendar year 1942	Calendar year 1943	Calendar year 1944	Period 7/1/45 to 12/15/45	Period 12/16/45 to 8/31/46	Totals
<b>Commercial:</b>											
Mechanical	\$208	\$75	\$153	\$153	\$993	\$1,448	\$7,687	\$8,292	\$7,169	\$12,741	\$38,506
Refinery equipment	4,578	21,905	48,258	4,345	5,222	16,127	859,389	260,948	91,954	1,464,998	1,464,998
Structural	30,886	6,432	3,947	10,174	10,174	10,174	1,079	1,079	1,079	17,896	86,170
Plate	280,588	86,161	120,386	170,925	330,144	532,960	270,107	1,154,592	331,819	188,742	3,961,454
Heavy pipe	103,401	84,510	15,384	30,864	12,471	4,590	312,599	679,557	146,599	315,390	1,807,424
Pipe, light	1,107			1,436	7,475	8,277	2,025,955	2,305,390	1,903,451	350,900	6,302,052
Well casing						1,319		5,496	2,774	1,002	11,346
Culvert pipe									101		101
Small plate work	60,946	78,000	123,621	117,468	231,399	273,618	558,993	412,449	995,990	493,706	3,394,412
Boilers	2,077	785	938	833	5,637	11,031	23,290	30,453	25,435	11,333	4,398
Miscellaneous	1,728	422	621								190,702
<b>Total commercial</b>	<b>624,271</b>	<b>268,940</b>	<b>275,848</b>	<b>385,191</b>	<b>593,215</b>	<b>996,077</b>	<b>4,559,865</b>	<b>4,947,878</b>	<b>5,210,321</b>	<b>1,459,990</b>	<b>17,171,555</b>

## PART II—APPROXIMATE TONNAGE OF SALES BY SALES CLASSIFICATION

Product classifications	Calendar year 1937	Calendar year 1938	Calendar year 1939	Calendar year 1940	Calendar year 1941	Calendar year 1942	Calendar year 1943	Calendar year 1944	Period 7/1/45 to 12/15/45	Period 12/16/45 to 8/31/46	Totals
<b>Commercial:</b>											
Mechanical	2	1		1	5	8	34	34	31	56	172
Refinery equipment	40	180	69	38	36	728	2,272	1,004	410	291	5,088
Structural	347		52	32	66	14		5	20	87	623
Plate	2,593	757	977	1,421	2,000	2,943	3,263	5,429	1,774	809	22,080
Heavy pipe	1,697	768	134	326	89	25	1,417	2,648	780	1,549	9,432
Pipe, light	11			12	55	51	10,233	13,560	10,771	1,690	36,383
Well casing						8	4	32	17	5	66
Culvert pipe											
Small plate work	897	682	905	1,112	1,709	1,433	2,480	1,605	5,876	2,563	19,352
Boilers	24	7	5	7	38	60	101	98	128	52	398
Miscellaneous	15	4									
<b>Total commercial</b>	<b>8,536</b>	<b>2,439</b>	<b>2,240</b>	<b>2,949</b>	<b>3,999</b>	<b>6,280</b>	<b>19,834</b>	<b>34,505</b>	<b>19,808</b>	<b>7,162</b>	<b>93,751</b>

## Consolidated Steel Corp. of Texas

## PART I—APPROXIMATE DOLLAR VOLUME OF SALES BY SALES CLASSIFICATION

Product classifications	Fiscal years ending August 31						Totals
	1940	1941	1942	1943	1944	1945	
Commercial:							
Structural:	\$162,461	\$842,197	\$654,265	\$915,192	\$246,147	\$918,538	\$4,540,366
Reinforcing:	15,436	214,075	180,445	230,260	23,235	45,221	750,226
Plate:	66,852	238,628	800,439	908,838	466,431	711,864	3,979,444
Grain bins:							6,630
Miscellaneous:	4,455	42,270	116,231	235,006	759,019	26,659	1,266,853
Total dollar volume of sales	249,224	1,337,170	1,751,410	2,359,456	1,494,832	1,402,222	10,555,569
Recurring items:							
Add sales accrued in of last day of each year on jobs partially completed:	61,984	268,609	470,292	332,255	240,517	308,870	2,392,126
Deduct sales accrued as of first day of each year on jobs partially completed:		61,984	668,639	470,898	806,545	840,517	1,556,577
Net sales per corporate records	311,224	1,543,825	1,553,063	1,981,449	1,533,094	1,470,575	11,216,240

## PART II—APPROXIMATE TONNAGE OF SALES BY SALES CLASSIFICATION

Commercial:							
Structural:	1,217	7,579	9,947	5,241	1,489	2,559	34,441
Reinforcing:	231	2,115	2,165	2,330	2,341	564	10,320
Plate:	719	2,165	2,031	3,211	1,847	4,448	9,914
Grain bins:							22,397
Miscellaneous:	27	112	260	661	5,243	52	36
Total tonnage	2,084	12,032	17,433	12,043	8,922	7,623	65,536
							73,710

923

## Interrogatory No. 19

What is the approximate total price that you contemplated ultimately receiving from Columbia Steel Company for your assets and business when the purchase agreement was made?

## Answer

Consolidated contemplated that, if the transaction was closed on March 31, 1947, it would ultimately have received from Columbia Steel Company approximately \$10,000,000 for fixed assets (\$8,293,319 plus and minus adjustments for changes subsequent to August 31, 1946) plus certain payments, the amounts of which could not be reasonably approximated at the date of the agreement, such as payment for the cost of whatever materials were on hand at the closing date<sup>1</sup> and Consolidated's proportion of the sales value of whatever work was in process at the closing date, to the extent that such amount was not paid to Consolidated by its customers prior to the closing date.

924

## Interrogatory No. 20

What was the approximate tonnage and dollar volume of unfilled orders on your books at or about the time the purchase agreement was made?

## Answer

The attached schedules show the approximate tonnage and dollar volume of unfilled orders on the books of each of the companies named in the answer to Interrogatory 4 as of November 30, 1946. The figures were compiled according to product classification and reflect the total sales price and tonnage of uncompleted orders, some portion of which may have been completed and included in amounts reflected in income on the accrual basis of accounting. It is not practicable to attempt to relate steel tonnage to dollar amounts accrued on the books of each company at November 30, 1946, and no attempt has been made to develop such figures.

<sup>1</sup>Plus a further amount (possibly \$200,000) to be determined by examination and count of the inventory of Western Pipe & Steel Company of California still remaining on the closing date.

925

## Interrogatory No. 20

*Consolidated Steel Corp., California—Approximate tonnage and dollar volume of unfilled orders as of Nov. 30, 1946*

## DOLLAR VOLUME

Product classification	Jobs not started	Jobs started	Total
Mechanical.....	\$113,302	\$1,190,545	\$7,303,847
Industrial buildings.....	44,294	82,797	127,091
Structural.....	706,055	5,196,381	5,892,436
Plate.....	73,274	887,356	960,630
Heavy pipe.....		6,134,677	6,134,677
Combination.....		1,065,977	1,065,977
Oil derricks.....		7,862	7,862
Miscellaneous.....		7,834	7,834
Total.....	936,925	14,563,429	15,500,354
Less accrual at Nov. 30, 1946.....		6,173,432	6,173,432
Backlog Nov. 30, 1946.....	936,925	8,389,997	9,326,922

## APPROXIMATE TONNAGE

Mechanical.....	704	1,445	2,149
Industrial buildings.....	113	262	375
Structural.....	2,765	25,155	27,920
Plate.....	227	3,413	3,640
Heavy pipe.....		60,010	60,010
Combination.....		3,386	3,386
Oil derricks.....		17	17
Miscellaneous.....			
Total.....	3,809	93,688	97,497
Less accrual at Nov. 30, 1946.....		?	?
Backlog Nov. 30, 1946.....	3,809	?	?

NOTE.—Does not include shipbuilding or ship repair contracts aggregating approximately \$51,703,000 of which it is estimated that approximately \$439,000 remained to be completed at Nov. 30, 1946.

926 *Western Pipe and Steel Co. of California—Approximate tonnage and dollar volume of unfilled orders as of Nov. 30, 1946*

## DOLLAR VOLUME

Product classification	Jobs not started	Jobs started	Total
Mechanical.....	\$184,910	\$627,481	\$812,391
Refinery equipment.....	2,680	62,462	65,151
Structural.....	21,209	255,976	277,185
Plate.....	387,224	975,703	1,362,927
Heavy pipe.....	2,445,342	1,177,361	3,622,703
Pipe, light.....	700	65,000	65,700
Well casing.....	223,849	89,021	312,867
Culvert pipe.....	7,004	111,714	118,718
Small plate work.....	230,558	686,508	917,066
Boilers.....		46,836	46,836
Bolted tanks.....	6,016	73,743	79,759
Grain bins.....	2,500	8,324	10,824
Miscellaneous.....	29,177	47,841	77,018
Total.....	3,535,175	4,227,970	7,763,145
Less accrual at Nov. 30, 1946.....		529,612	529,612
Backlog Nov. 30, 1946.....	3,535,175	3,698,358	7,233,533

926 *Western Pipe and Steel Co. of California—Approximate tonnage and dollar volume of unfilled orders as of Nov. 30, 1946—Con.*

## APPROXIMATE TONNAGE

Product classification	Jobs not started	Jobs started	Total
Mechanical	1,420	3,072	4,492
Refinery equipment	3	128	131
Structural	101	615	716
Plate	2,006	4,882	6,888
Heavy pipe	15,670	6,907	22,577
Pipe, light	42	360	402
Well casing	1,673	359	2,032
Culvert pipe	59	506	565
Small plate work	910	2,021	2,931
Boilers		138	138
Bolted tanks	30	263	293
Grain bins	4	19	23
Miscellaneous	2	92	94
Total	21,920	18,952	40,872
Less accrual at Nov. 30, 1946			
Backlog Nov. 30, 1946	21,920		

Note.—Does not include shipbuilding or ship repair contracts aggregating approximately \$43,798,000 of which it is estimated that approximately \$2,970,000 remained to be completed at Nov. 30, 1946.

927 *The Steel Tank and Pipe Co. of California—approximate tonnage and dollar volume of unfilled orders as of Nov. 30, 1946*

## DOLLAR VOLUME

Product classification	Jobs not started	Jobs started	Total
Mechanical		\$500	\$500
Refinery equipment	\$14,000	112,938	126,938
Structural		21,950	21,950
Plate	126,041	92,561	218,602
Heavy pipe	34,817	37,882	72,699
Pipe, light	157,610	47,250	204,860
Well casing	1,910	9,376	11,286
Culvert pipe			
Small plate work	60,151	51,955	121,106
Boilers	7,412		7,412
Bolted tanks			
Grain bins			
Miscellaneous	27	561	608
Total backlog	410,968	374,999	785,967

## APPROXIMATE TONNAGE

Product classification	Jobs not started	Jobs started	Total
Mechanical		2	2
Refinery equipment	49	450	499
Structural		78	78
Plate	455	381	836
Heavy pipe	173	273	446
Pipe, light	920	313	1,233
Well casing	10	53	63
Culvert pipe			
Small plate work	284	241	525
Boilers	7		7
Bolted tanks			
Grain bins			
Miscellaneous		3	3
Total backlog	1,901	1,734	3,635

*Consolidated Steel Corp. of Texas—approximate tonnage and dollar volume of unfilled orders as of Nov. 30, 1946*

Product classifications	Dollar volume		Total	Approximate tonnage		Total
	Fabrication not started	Partially fabricated		Fabrication not started	Partially fabricated	
Structural.....	\$1,070,945	\$1,754,054	\$2,824,999	5,238	6,678	11,916
Reinforcing.....	27,348	43,503	70,851	439	627	1,066
Plate.....	208,928	622,748	831,676	674	931	1,605
Miscellaneous.....	73,045	16,085	89,130	54	29	83
Total backlog.....	1,380,266	2,437,080	3,817,346	6,405	8,265	14,670
Less: Accruals to Nov. 30, 1946.....		1,218,802	1,218,802		?	?
Backlog on accrual basis at November 30, 1946.....	1,380,266	1,218,278	2,598,544	6,405	?	?

928

## Interrogatory No. 21

What are the approximate tonnage and dollar volume of rolled steel products bought by you or any of the companies named in your answer to Interrogatory 4 from each supplier for each of the years 1937 through 1946; or fiscal years most nearly approximating said years, for which figures are available?

## Answer

The attached schedule shows approximate tonnage and dollar volume of rolled steel products purchased by Consolidated Steel Corporation and the companies named in the answer to Interrogatory 4 from each supplier for each of the years 1937 through 1946. These figures are necessarily estimates but are believed to be substantially correct. There is included in the tonnage and dollar volume of steel purchased approximately 537,000 tons of steel actually purchased and paid for by the United States Maritime Commission but furnished to Consolidated Steel Corporation for the construction of ships for the Maritime Commission. The dollar value of this steel (included in the attached schedules) is estimated to be \$30,520,000. It is further estimated that this steel was received as follows:

Year	Tonnage	Amount
1942.....	108,000	\$5,156,000
1943.....	158,000	9,004,000
1944.....	182,000	10,374,000
1945.....	89,000	4,986,000
Total.....	537,000	30,520,000

In the limited time available it was not possible to determine the tonnage or dollar volume of such steel furnished by individual suppliers.

PART I—APPROXIMATE TONNAGE OF ROLLED STEEL PRODUCTS PURCHASED

Supplier	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Total
Alan Wood Steel Co.											Tons
Allegany Lumber, Steel Co.	3,391			4,741	5,085	10,724	6,942	7,428	8,476	8,870	53,907
American Rolling Mill Co.	94		652	236	211	876	2,955	2,735	228	151	4,997
Apollo Steel Co.						249	215	2,352	421	8	3,255
Armco Railroad Sales Co.								4,041			798
Atlantic Steel Co.						1,932	4,011	4,041	1,495		11,470
Bethlehem Steel Co.	35,552	16,770	10,200	34,126	44,003	76,671	85,105	20,182	32,074	35,591	382,322
Casne Steel Co.						6	600	54,174			434,966
Carnegie Illinois Steel Co.					2,500	29,887	20,446	27,106	113	63	1,139
Carpenter Steel Co.					1	176	89	49	26,114		113,253
A.M. Castle Co.						407	426	232	41	48	369
Central Iron & Steel Co.								1,000	213		1,114
Colorado Fuel & Iron Corp.				3,312	6,759	3,443	610	83	1,554		1,114
Columbia Steel Co.				50,081	75,789	145,713	143,791	87,051	38,127	81,899	3,164
Columbia Steel Co. (San Francisco)			43,179			320	1,279	958			17,030
Commercial Shearing & Stamping Co.											748,547
Ducommun Metals Co.		23,240		165							3,165
Geneva Steel Co.	59,577						3,207	155	639	1,324	1,752
Granite City Steel Co.					146	5,925	9,377	14,011	103	64	1,581
Great Lake Steel Co.						721	4,833	5,311	13,118	86	27,215
Hesse-Entled Iron Works								11,229	14,207	704	35,670
Inland Steel Co.								11,617	3,261		20,034
931-932 Jones & Laughlin Corp.					621	4,902	18,072	17,667	1,665	1,115	2,300
Earle M. Johnson Co.	536		71	457	120	10,149	25,916	29,070	2,910	2,025	43,401
Judson Steel Co.		106				287	501	433	213	203	71,921
Junior Steel Co.								800	800		1,817
Kaiser Co. Inc.						17	66	50	33	595	800
Los Angeles Iron & Steel Co.						217	1,008	51,816	35,964	19,411	762
Lukens Steel Co.						4	18	13	9	108	108
Markle Steel Co.					2,146	3,818	2,435	1,546	2,348	3,539	23,150
Midwest Pipe & Supply Co.		392	1,728	1,892		271	270	281	315	16	1,997
National Tube Co.						3	431	557		6	233
National Tube Products Co.						56	21	122	59		236
Newport Rolling Mill Co.						114	153	559	171	13	1,010
Otis Steel Co.							90				90
Perical Steel & Supply Co.	700										700
The Phoenix Iron Co.						15	61	45	30	274	425
Pine Iron Works Co.								636	34		670
Pittsburgh Steel Co.					141	769		459			941

929-930 Purchases of rolled steel products by Consolidated Steel Corp. (California), Western Pipe & Steel Co., Steel Tank & Pipe Co., and Consolidated Steel Corp. of Texas—Continued

PART I—APPROXIMATE TONNAGE OF ROLLED STEEL PRODUCTS PURCHASED—Continued

Supplier	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Total
	Tons	Tons	Tons	Tons	Tons	Tons	Tons	Tons	Tons	Tons	Tons
Ballance Steel Co.	2,153	2,896	4,288	11,899	1,091	29,223	32,808	20,646	7,074	6,083	523
Republic Steel Corp.					141	156	131	65	50	18	130,061
Joseph T. Ryerson & Son, Inc.									2,038		591
887-888 Sharns Steel Co.						149	2,176	7,255	2,990	1,855	2,038
Sheffield Steel Corp.							40				14,025
Spang Steel Co.											40
Superior Steel Corp.						5,458	4,736	4,689	2,070	1,931	249
Tennessee Coal, Iron & Railroad Co.		19		1,901	3,027						23,725
Townsend Co.								249			19
Union Iron & Steel Co.						17	60	51	34	179	350
U. S. M. C. and U. S. Navy (surplus)						313	10,234	11,171	16,949	3,795	42,492
U. S. Steel Supply Co.							90	84	300	3	1,477
War Assets Administration (surplus)									365	1,373	1,738
Wardon Steel Co.				1,488		1,473	1,021	608	1,586		6,026
Wheeling Steel Co.			4			307	2,252	1,627			4,366
Wickwire Spencer Steel Co.								37	4		41
Worth Steel Co.	69		321	3,360	1,081	849	1,910	548	175	647	9,130
Youngstown Sheet & Tube Co.		28	323	1,036	966	1,051	7,105	14,581	2,031	171	24,939
Miscellaneous	103,296	44,050	69,862	117,644	163,428	329,711	404,190	390,532	225,273	178,699	2,036,635

PART II—APPROXIMATE DOLLAR VALUE OF ROLLED STEEL PRODUCTS PURCHASED

Supplier	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Totals
Alan Wood Steel Co.	\$198,496	\$31,680	\$37,040	\$274,357	\$285,757	\$525,053	\$319,068	\$338,832	\$291,123	\$475,430	\$2,753,895
Allegheny Ludlum Steel Co.	5,153			13,120	11,849	17,703	130,790	32,420	11,852	7,938	230,335
American Rolling Mill Co.						26,352	12,243	137,848	24,488	482	201,413
Apello Steel Co.								45,486			45,486
Armco Railroad Sales Co.							325,494	427,853	92,148		978,149
Atlantic Steel Co.						131,654	10,555	9,867			20,422
Bethlehem Steel Co.	1,938,470	929,059	1,097,463	1,650,432	2,440,615	3,990,276	4,024,725	2,946,954	1,805,014	2,065,933	23,816,445
Caiser Steel Co.						282	16,625	16,625	6,618	3,432	51,578
Carriage Illinois Steel Co.						1,385,872	1,136,056	1,463,570	1,418,171		5,946,004
Chaparral Steel Co.						9,553	4,806	2,679	2,219	711	20,127
A. M. Clarks Co.						9,054	36,217	27,162	18,108	5,022	178,794
Central Iron & Steel Co.							34,770	57,000	87,024		178,794
Colorado Fuel & Iron Corp.						151,147	21,718	3,765			178,794
Columbia Steel Co.						7,411,123	7,750,505	4,521,142	2,161,056	4,790,187	40,631,888
Columbia Steel Co. (San Francisco)						27,156	108,623	81,467	54,312		271,558
Commercial Shoring & Stamping Co.											
Ducummon Metals Co.											
Deaneva Steel Co.						7,537	30,146	22,610	14,263	69,739	162,717
Granite City Steel Co.						279,648	543,633	787,896	712,326	9,128	2,814,404
Great Lake Steel Co.						38,536	278,062	317,367	810,796	5,982	1,506,970
Hess-Ersted Iron Works								650,653	191,681		2,016,922
Inland Steel Co.								35,169	89,152		1,124,021
937-938 Jones & Laughlin Corp.						289,517	1,055,023	1,030,095	137,472	94,500	2,038,007
Earle M. Jorgensen Co.						543,481	1,429,203	1,635,416	217,313	171,657	4,053,982
Judson Steel Co.	19,853	5,084	4,047	25,040	6,021	18,467	38,829	32,250	17,355	22,341	133,243
Junior Steel Co.								45,900	45,900		45,900
Kaiser Co., Inc.						1,469	5,576	4,407	2,938	50,870	65,960
Los Angeles Iron & Steel Co.						18,425	80,646	2,916,548	2,015,380	1,156,101	6,187,900
Lukens Steel Co.						394	1,577	2,916,548	2,015,380	1,156,101	6,187,900
Martin Steel Co.	4,271	20,116	97,961	104,090	119,436	192,139	107,424	312,116	147,728	10,578	14,520
Midwest Pipe & Supply Co.						14,549	61,619	20,884	17,057	221,316	1,198,766
National Steel Products Co.						64,689	64,689	64,689	64,689	64,689	67,698
National Tube Co.						3,205	3,218	7,355	3,350	856	149,700
Newport Rolling Mill Co.						17,199	22,988	30,777	25,708	1,924	118,108
Otis Steel Co.							5,268				98,590
Perical Steel & Supply Co.	39,314					1,317	4,267	3,950	2,634	23,432	39,314
The Phoenix Iron Co.								36,262	1,904		38,166
Pine Iron Works Co.								26,163			26,163
Pittsburgh Steel Co.											
Reliance Steel Co.								8,189	5,459	17,941	45,238

835. *Purchases of rolled steel products by Consolidated Steel Corp. (California), Western Pipe & Steel Co., Steel Tank & Pipe Co., and Consolidated Steel Corp. of Texas—Continued*

PART II—APPROXIMATE DOLLAR VALUE OF ROLLED STEEL PRODUCTS PURCHASED—Continued

Supplier	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Totals
Republic Steel Corp.	119,962	201,995	240,034	639,280	683,516	1,422,891	1,595,086	1,126,800	418,781	308,837	6,766,182
Joseph T. Ryerson & Son, Inc.					8,822	8,545	7,192	3,504	6,800	1,005	35,378
Sharon Steel Co.									125,188		125,188
Sheffield Steel Co.						9,611	101,801	412,004	116,244	114,980	754,620
Spang Steel Co.							5,912				5,912
Superior Steel Corp.								14,183			14,183
939-940 Tennessee Coal, Iron & Railroad Co.				90,504	113,697	231,768	227,438	234,637	89,311	124,926	1,121,591
Townsend Co.		1,150									1,150
Union, Iron & Steel Co.						1,511	6,042	4,532	3,021	16,180	31,266
U. S. M. C. & U. S. Navy (surplus)						36,927	635,899	675,949	975,866	280,738	2,598,989
U. S. Steel Supply Co.							5,034	4,573	16,196		25,944
W. & A. Steel Administration (surplus)									20,440	83,886	104,326
W. & A. Steel Co.				74,440		63,894	44,917	27,191	94,812		308,254
Wheeling Steel Co.						23,787	115,229	90,264	502		239,260
Widawitz-Hyincer Steel Co.			18,287	190,496	71,442	47,697	106,623	38,019	14,849	36,843	531,326
Worth Steel Co.	4,567					66,611	415,842	833,866	124,065	15,045	1,454,481
Yonkers Sheet & Tube Co.	1,380	1,960	18,710	69,056	69,792	343,554	1,166,991	855,462	646,677	567,925	3,741,477
Miscellaneous											
Totals	5,571,774	2,454,228	3,948,010	6,594,537	8,960,136	17,484,366	22,769,046	22,239,496	13,066,704	10,907,371	113,936,550

941 Explanatory Note With Reference to the Answers to  
Interrogatories Nos. 7 and 9

It should be understood in connection with the figures shown in the schedules appended to the answers to Interrogatories Numbers 7 and 9 that such figures include all of the work performed and therefore dollar and tonnage figures in substantial amounts reflecting services and materials other than fabricated steel products. Such included figures cannot be segregated within the time limited for the filing of answers to the Interrogatories.

943 *Plaintiff's Exhibit 4*

In the District Court of the United States for the District of  
Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

vs.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION, AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

ANSWERS OF UNITED STATES STEEL CORPORATION OF DELAWARE TO  
INTERROGATORIES

949 Interrogatory 8

What is the approximate tonnage and dollar volume of rolled steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available in each of the following states: (a) Arizona, (b) California, (c) Idaho, (d) Louisiana, (e) Montana, (f) Nebraska, (g) New Mexico, (h) Oregon, (i) Texas, (j) Utah, (k) Washington.

Answer

See the following pages.

United States Steel Export Company has sold no rolled steel products in any of the states above named. Rolled steel products produced by Geneva Steel Company are sold in the states above mentioned by the subsidiaries of U. S. Steel whose names appear at the top of the next five pages.

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## Carnegie-Illinois Steel Corporation

	1927	1928	1929	1930	1940	1941	1942	1943	1944	1945	1946
California:											
Net tons	60,918	22,268	2,480	17,254	21,700	251,072	251,072	707,422	87,682	44,004	1,912
Dollars	2,774,116	1,004,820	108,240	780,415	1,447,147	15,782,322	15,782,322	31,740,877	4,180,038	2,151,435	96,425
Washington:											
Net tons	16,283	5,103	304	5,326	16,909	23,416	23,416	12,921	15,421	14,590	464
Dollars	711,667	234,500	8,922	342,922	707,971	2,382,127	2,382,127	598,741	861,161	702,174	22,904
Oregon:											
Net tons	8,446	2,180				146,246	146,246	403,554	1,032	1,032	
Dollars	425,470	151,480				6,541,712	6,541,712	17,022,069	81,042	81,042	
Arizona:											
Net tons	2,461	1,229	1,100	221	46	65	65	54	47	47	
Dollars	150,660	63,120	65,720	10,080	2,057	2,912	2,912	2,922	2,146	2,146	
Idaho:											
Net tons	1,359	572	58	56				12	5	5	141
Dollars	67,366	42,595	2,442	2,576				376	2,006	2,006	7,374
Montana:											
Net tons	2,002	1,427	2,522	2,062	1,701	1,709	1,709	1,289	2,423	2,423	1,710
Dollars	146,047	71,865	111,792	126,268	84,225	62,085	62,085	64,098	163,171	163,171	96,082
Nevada:											
Net tons	742	183	23		40						
Dollars	23,395	8,035	972		1,742						
New Mexico:											
Net tons	761	542	576	557				443	1,111	1,111	589
Dollars	25,023	25,916	24,521	25,240	10,476	16,923	16,923	20,108	53,916	53,916	21,322
Utah:											
Net tons	4,642	2,612	125	324	765	561	561	472	666	666	223
Dollars	203,246	172,607	5,775	14,646	34,212	28,622	28,622	45,945	34,925	34,925	37,189
Louisiana:											
Net tons	1,308	2,031	3,436	6,968	5,667	42,529	42,529	87,947	51,009	51,009	13,027
Dollars	72,795	98,442	142,610	324,979	253,182	1,941,798	1,941,798	3,090,271	2,319,310	2,319,310	623,670
Texas:											
Net tons	71,920	24,274	31,241	35,447	79,740	145,002	145,002	120,244	136,629	136,629	45,095
Dollars	3,108,149	1,045,095	1,342,510	1,570,629	3,584,403	6,512,631	6,512,631	6,203,291	6,203,463	6,203,463	2,003,301

NOTE.—The foregoing figures reflect the tonnage and dollar volume of rolled steel products delivered in each of said States during each of said years. Figures are not available showing the tonnage and dollar value of sales contracts made in each of said States during said years.

## American Steel and Wire Company

UNITED STATES VS. COLUMBIA STEEL CO. ET AL.

517

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California:										
Net tons	1,071	232			128	365	803	3,357	65	
Dollars	96,083	13,908			8,513	24,451	58,547	237,407	4,533	
Washington:										
Net tons	290	171			10	88	57	770	471	
Dollars	15,164	10,251			665	5,065	4,158	54,293	25,974	
Oregon:										
Net tons	590	251			2	1				
Dollars	28,753	15,047			67					
Arizona:										
Net tons		3								
Dollars		130								
Idaho:										
Net tons	53		4				33	32	97	
Dollars	2,719		262				2,405	2,256	6,705	
Montana:										
Net tons	10		1		6			50		
Dollars	323	960	63		399			3,536		
Nevada:										
Net tons		2								
Dollars		120								
New Mexico:										
Net tons	4				2				233	
Dollars	209	60			133				16,249	
Utah:										
Net tons	3	5				1	3	2	12	
Dollars	157	300				67	219	141	807	
Louisiana:										
Net tons	2		19	11	21	5	96	203		
Dollars	105		1,196	603	1,307	336	6,990	14,314		
Texas:										
Net tons	6	3	7	1	590	239	696	1,155	578	
Dollars	314	180	441	63	37,246	17,350	58,745	81,430	40,310	

NOTE.—The foregoing figures reflect the tonnage and dollar volume of rolled steel products delivered in each of said States during each of said years. Figures are not available showing the tonnage and dollar value of sales contracts made in each of said States during said years.

## Tennessee Coal, Iron and Railroad Company

952

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California:										
Net tons	9,295	5,504		29	859	10,870	40,297	22,912	2,993	
Dollars	419,053	240,340		1,235	35,511	490,406	1,812,341	1,158,600	204,666	298
Washington:										
Net tons	701	2,629		106	117		1,189	5,709	278	
Dollars	45,209	114,080		6,564	5,966		54,212	299,365	13,374	
Oregon:										
Net tons	853	807								
Dollars	29,947	38,114								
Arizona:										
Net tons	122	42		58	32	24,633	32,387	15,992	62	
Dollars	5,939	1,859	85	2,457	1,398	1,094,977	1,432,134	726,854	4,024	
Idaho:										
Net tons	1	233								
Dollars	46	10,743								
Montana:										
Net tons	7	33								
Dollars	320	1,715								
Nevada:										
Net tons										
Dollars										
New Mexico:										
Net tons	214	21	7	19			25	104	405	44
Dollars	13,950	1,063	306	970			1,073	5,478	23,728	3,190
Utah:										
Net tons	63	108					56			
Dollars	2,803	4,708					2,461			
Louisiana:										
Net tons	24,910	23,914	35,469	50,316	59,876	66,462	55,095	62,764	52,579	30,720
Dollars	1,550,434	1,521,455	2,048,106	2,578,933	3,316,806	3,494,936	4,387,701	3,308,641	2,954,069	1,842,623
Texas:										
Net tons	115,609	72,748	90,164	128,943	131,839	156,326	197,004	120,843	141,164	122,596
Dollars	6,787,621	4,114,964	5,315,915	6,930,804	7,173,421	8,426,291	9,921,523	6,109,918	7,798,190	7,042,532

NOTE.—The foregoing figures reflect the tonnage and dollar volume of rolled steel products delivered in each of said States during each of said years. Figures are not available showing the tonnage and dollar value of sales contracts made in each of said States during said years.

## Columbia Steel Company

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California:										
Net tons	155,880	113,432	224,140	245,815	494,038	620,894	568,373	980,544	378,805	328,060
Dollars	10,100,026	7,531,078	13,310,588	14,962,556	39,805,596	30,477,362	28,387,563	44,957,710	30,857,259	19,840,888
Washington:										
Net tons	13,501	11,574	30,277	41,162	57,398	176,060	202,151	309,401	100,049	37,300
Dollars	901,527	765,945	1,962,530	2,271,439	3,180,434	8,411,115	9,643,727	6,735,076	5,003,757	2,365,438
Oregon:										
Net tons	14,584	11,755	22,588	33,701	84,416	85,127	53,997	374,468	124,037	31,479
Dollars	931,580	764,199	1,351,304	1,871,521	4,372,476	4,202,765	2,827,306	16,874,236	6,550,380	1,695,352
Arizona:										
Net tons	1,721	1,197	3,934	5,155	6,159	4,815	2,650	2,606	3,494	3,911
Dollars	116,335	102,836	220,688	308,459	385,723	247,359	141,538	134,630	197,580	245,678
Idaho:										
Net tons	3,077	2,220	3,430	4,826	3,069	1,707	2,172	2,981	5,804	3,902
Dollars	194,663	146,306	210,690	282,098	184,594	92,803	116,137	154,072	309,081	233,161
Montana:										
Net tons	7	2	49	24	7	1	262	2,395	814	45
Dollars	366	126	3,022	1,234	415	55	13,192	125,129	39,387	2,409
Nevada:										
Net tons	580	359	1,641	1,327	1,012	3,322	126	1,157	1,718	290
Dollars	37,027	25,475	90,708	87,565	59,721	166,805	7,847	69,692	90,335	17,588
New Mexico:										
Net tons										
Dollars										
Utah:										
Net tons										
Dollars										
Net tons	2,100	1,784	6,895	5,965	6,491	6,193	5,854	6,517	8,318	12,542
Dollars	136,089	122,364	396,244	348,745	394,818	322,054	290,542	344,980	472,794	701,056
Louisiana:										
Net tons										
Dollars										
Texas:										
Net tons	208	31	332	2,291	1,492	438	495	1,606	849	115
Dollars	12,789	2,148	20,026	121,143	84,034	25,111	26,113	78,834	43,432	8,170

Notes.—The foregoing figures reflect the tonnage and dollar volume of rolled steel products delivered in each of said States during each of said years. Figures are not available showing the tonnage and dollar value of sales contracts made in each of said States during said years.

**United States Steel Supply Company**

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California:										
Net tons	( )	( )	4	3	51	466	256	322	151	52
Dollars	( )	( )	285	215	3,093	32,664	17,573	23,422	10,507	4,165
Washington:										
Net tons	( )	( )	3	2	39	135	149	95	98	2
Dollars	( )	( )	214	151	2,891	9,436	10,537	7,025	6,146	163
Oregon:										
Net tons	( )	( )			512	456	168	534	8	4
Dollars	( )	( )			37,190	31,971	11,631	11,534	336	325
Arizona:										
Net tons	( )	( )	2	5	84	26	14	5	21	5
Dollars	( )	( )	143	342	6,064	1,852	968	358	1,440	373
Totals:										
Net tons	( )	( )	12	12	3	36	15	3	11	1
Dollars	( )	( )	208	575	120	2,624	1,065	219	730	1
Montana:										
Net tons	( )	( )	38	73	60	129	167	377	611	244
Dollars	( )	( )	2,917	5,472	6,545	9,572	11,555	27,153	43,574	19,086
Nevada:										
Net tons	( )	( )			4	7	136	19	2	
Dollars	( )	( )			270	363	1,380	1,380		
New Mexico:										
Net tons	( )	( )	15	42	18	18	7	53	147	40
Dollars	( )	( )	1,079	2,556	1,270	1,335	463	3,836	10,396	3,674
Utah:										
Net tons	( )	( )	36	77	32	275	132	1	1	82
Dollars	( )	( )	1,625	6,048	3,973	19,470	10,657	704	73	
Louisiana:										
Net tons	( )	( )	41	26	187	360	539	466	717	593
Dollars	( )	( )	2,809	1,904	12,974	25,529	37,532	34,045	49,070	44,907
Texas:										
Net tons	( )	( )	310	320	2,014	1,107	2,311	4,241	8,992	4,565
Dollars	( )	( )	22,394	23,227	140,798	80,067	161,592	305,428	637,132	351,732

Not available.

NOTE.—The foregoing figures reflect the tonnage and dollar volume of rolled steel products delivered in each of said states during each of said years. Figures are not available showing the tonnage and dollar value of sales contracts made in each of said states during said years.

955

## Interrogatory 9

What is the approximate tonnage and dollar volume of fabricated steel products sold by you and by each of the companies named in your answer to interrogatory 4 during each of the calendar years 1937 through 1946, or fiscal years most nearly approximating said years, for which figures are available in each of the states listed in interrogatory 8?

## Answer

See the following pages.

The tonnage and dollar volume figures set forth on the following pages include sales made by Columbia Steel Company of the fabricated steel products of American Bridge Company and Virginia Bridge Company.

These figures reflect the tonnage and dollar value of fabricated steel products sold during each of said years for delivery within the designated state. Figures are not available showing the tonnage and dollar value of sales according to the state within which the sales contract was made.

## American Bridge Company

366

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California: Net tons. Dollars.	8,487 1,163,826	10,012 1,674,674	4,600 749,703	31,380 4,153,617	14,427 1,839,378	10,002 2,370,952	946 232,575	13,534 2,962,967	5,767 961,871	21,447 4,878,063
Washington: Net tons. Dollars.	5,944 633,419	14,367 1,260,201	13,281 1,365,256	16,742 1,798,908	31,346 5,085,339	31,989 4,828,047	12,614 1,393,273	1,966 3,561,950	921 126,143	1,629 521,721
Oregon: Net tons. Dollars.	154 17,442	76 4,444			1,433 150,829	939 159,418	830 78,859	1,029 176,603	60 7,008	78 12,899
Arizona: Net tons. Dollars.			554 42,659	471 42,659		38 7,787	6,309 892,679	18 2,665		1,004 244,336
Idaho: Net tons. Dollars.	425 55,724	485 43,000	348 26,807	133 14,000	769 72,910	1,028 157,842	100 21,380	128 46,029	47 6,463	398 97,999
Montana: Net tons. Dollars.	60 6,451	409 36,690	972 102,058	676 50,573	460 47,242	70 10,232		201 12,602	190 22,800	1,064 214,108
Nevada: Net tons. Dollars.		166 24,329	50 6,032		14,738 1,869,086	1,100 127,073				
New Mexico: Net tons. Dollars.	368 44,470	1,586 132,472	85 6,092	323 31,617	158 19,870		126 11,006	95 9,842	115 17,035	912 108,721
Utah: Net tons. Dollars.		273 25,050	1,367 171,650	2,036 260,920	965 89,817	65,541 11,157,342	1,666 317,737	64 37,978	1,134 134,516	2,042 387,131
Louisiana: Net tons. Dollars.	7 1,600	262 194,742	2,558 195,336	10,753 1,046,656	441 127,250	2,579 343,377	3 1,983			210 41,725
Texas: Net tons. Dollars.	1,103 95,023	459 36,256	2,122 335,734	1,438 227,194	757 67,912	1,518 155,024	19 4,251	219 39,804	1,464 158,319	6,374 828,479
Total: Net tons. Dollars.	16,548 2,018,455	37,105 3,401,876	25,957 3,022,187	63,631 7,626,134	55,194 9,499,333	114,894 19,339,064	22,313 2,925,746	17,344 3,639,967	9,707 1,466,472	35,786 7,386,112

## Virginia Bridge Company

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
California:										
Net tons	463	770	932	980			250		4,646	2,436
Dollars	48,022	74,941	67,341	80,369			35,870	11,404	433,086	362,402
Washington:										
Net tons	433	1,050		370	2,657	36	59	43	270	282
Dollars	47,865	121,959		35,612	222,886	3,500	16,907	5,610	40,669	83,016
Oregon:										
Net tons	162	97			403		248			
Dollars	19,426	10,408			44,985		30,202			
Arizona:										
Net tons	40	40	163							
Dollars	3,128	3,168	13,850							
Idaho:										
Net tons	190	248								
Dollars	20,331	25,000								
Montana:										
Net tons	993	71	270						41	70
Dollars	127,314	6,802	25,439						23,641	14,714
Nevada:										
Net tons										
Dollars										
New Mexico:										
Net tons			200					787		
Dollars			21,025					101,422	9,568	
Utah:										
Net tons	155		31							
Dollars	16,670		2,935							
Louisiana:										
Net tons	1,346	1,484	2,935	761	1,875	9,684	2,037	1,862	316	2,785
Dollars	155,076	162,156	263,075	83,362	219,440	1,381,000	246,860	288,849	40,076	420,019
Texas:										
Net tons	2,360	6,417	2,472	3,687	3,098	4,847		164	6,074	4,234
Dollars	242,945	192,882	228,856	358,396	327,871	628,307		27,153	750,258	617,120
Total:										
Net tons	6,192	10,177	7,005	5,498	8,036	14,562	2,614	14,264	11,391	9,807
Dollars	686,447	986,925	650,541	546,060	815,183	2,011,257	332,938	1,658,430	1,304,316	1,497,971

In the District Court of the United States for the District of  
Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

v.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION, AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

REQUEST FOR ADMISSION OF FACTS

To: Morris, Steel, Nichols & Arsht, Esqs., DuPont Building,  
Wilmington, Delaware, Attorneys for Columbia Steel Company,  
United States Steel Corporation, and United States Steel Corpo-  
ration of Delaware. Richards, Layton and Finger, Esqs., DuPont  
Building, Wilmington, Delaware, Attorneys for Consolidated  
Steel Corporation.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, all  
of the defendants herein are hereby requested to admit within  
ten days, for the purpose of this action only, the following  
facts:

979 6. The defendant United States Steel Corporation made  
the following written statement to the Department of  
Justice in response to a questionnaire submitted by the Department  
in connection with its review of the legality of this acquisition prior  
to the filing of this suit:

10 "The question is asked as to why United States Steel could not  
compete with other steel producers in the sale of steel to Con-  
solidated. Consolidated has in the past purchased a considerable  
tonnage of steel from subsidiary companies of United States Steel,  
and it is believed, that United States Steel could continue to com-  
pete for the business of Consolidated so long as such business is  
available. There would, however, be no assurance that such busi-  
ness would be obtained by United States Steel and such assurance  
is the objective of the proposed acquisition."

981 Dated May 12, 1947.

John J. Morris, Jr.,  
JOHN J. MORRIS, Jr.,  
United States Attorney.

983

*Plaintiff's Exhibit 8*

In the District Court of the United States for the District of  
Delaware

Civil Action No. 1010

UNITED STATES OF AMERICA, PLAINTIFF

v.

COLUMBIA STEEL COMPANY, CONSOLIDATED STEEL CORPORATION,  
UNITED STATES STEEL CORPORATION AND UNITED STATES STEEL  
CORPORATION OF DELAWARE, DEFENDANTS

STATEMENT OF COLUMBIA STEEL COMPANY, UNITED STATES STEEL  
CORPORATION, AND UNITED STATES STEEL CORPORATION OF DELA-  
WARE IN RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION OF  
FACTS

The defendants Columbia Steel Company, United States Steel Corporation and United States Steel Corporation of Delaware make the following statement in response to the plaintiff's request for admission of facts, served on these defendants on May 13, 1947, for the purpose of this action only, and subject to all pertinent objections to admissibility which may be interposed at the trial:

984 6. These defendants admit that the defendant Columbia Steel Company, in response to the following quoted question submitted by the Department of Justice in connection with its review of the legality of this acquisition prior to the filing of this suit, made the following written answer on January 29, 1947:

"15. Why is it considered that this acquisition is the natural consequence of the sale of the Geneva Steel Plant to United States Steel? Why could not United States Steel compete with other steel producers in the sale of steel to Consolidated?"

"Answer.—The acquisition of the steel fabricating facilities of Consolidated Steel Corporation is the natural consequence of the sale of the Geneva Steel Plant to United States Steel 985 for these reasons. These facilities will provide an essential outlet for the plates and structural shapes which must be produced in volume at Geneva if that plant is to operate successfully. Furthermore, United States Steel requires these or similar facilities to compete successfully in the fabricated structural shape and plate market in the Western States.

"United States Steel subsidiaries have no plate or structural fabricating plants in the West. All fabricated structural steel sold in the Western market by United States Steel subsidiaries is

fabricated in Eastern plants and shipped by rail or water to the customers. In recent years there have been substantial increases in transportation costs, making shipments from the East more disadvantageous. The fabricating facilities of competitors located in the West have increased in recent years. One large competitor, Bethlehem Steel Corporation, supplies its West Coast fabricating plants with plain materials out of its steel-producing plants in the West as well as in the East. Another large producer of plain material, Kaiser Company, Inc., is reported to be negotiating for a plant to be converted for structural fabrication. It may also logically be expected that this producer may obtain other fabricating facilities in order to provide an outlet for plates and structurals produced at its Fontana plant.

"These competitive developments, together with the increasing importance of the Western market, would alone probably have required United States Steel to either buy or build fabricating facilities in the West. With the purchase of Geneva and the necessity for finding an outlet for its products in order to operate it successfully, an early move in one direction or the other was indicated. It is believed more desirable to acquire these existing facilities than to construct new facilities in the light of all the factors.

"West Coast fabricators not engaged in basic steel production may now obtain a wide range of their requirements of plain materials from Fontana, Bethlehem and Geneva. United States Steel will continue to compete with other steel producers in the sale of plain steel products to these fabricators.

"The question is asked as to why United States Steel could not compete with other steel producers in the sale of steel to Consolidated. Consolidated has in the past purchased a considerable tonnage of steel from subsidiary companies of United States Steel and, it is believed, that United States Steel could continue to compete for the business of Consolidated so long as such business is available. There would, however, be no assurance that such business would be obtained by United States Steel and such assurance is the objective of the proposed acquisition."

987

COLUMBIA STEEL COMPANY,

By A. T. OYSTON,

*Assistant Secretary.*

UNITED STATES STEEL CORPORATION,

By R. C. TYSON,

*Assistant Comptroller.*UNITED STATES STEEL CORPORATION  
OF DELAWARE,

By W. STENG, Jr.,

*Assistant to Comptroller.*

990

*Plaintiff's Exhibit 9*

60-138-93.

H. L. Wright: rm.

MAY 29, 1947.

EDWIN D. STEEL, Jr., Esq.,

*Morris, Steel, Nicholas & Arsh,**DuPont Building, Wilmington 41, Delaware.*

Re: United States v. Columbia  
Steel Company et al.

DEAR MR. STEEL: In connection with the trial of the above suit we may wish to offer evidence showing more of the current operations of United States Steel Corporation's subsidiaries than is disclosed by the interrogatory answers. It occurs to us that you might prefer to submit a summary statement of the following facts rather than produce the original records which disclose them, pursuant to a subpoena.

1. A complete list of the direct or indirect subsidiaries are referred to in your interrogatory answers, with the following data as to each:

- a. Statement of the general nature of the business.
- b. Location of the principal office and physical facilities.
- c. Nature and extent of U. S. Steel's interest.

2. In the case of National Tube Company, Oil Well Supply Company, and United States Steel Products Company we should also like to include the following data:

- a. Their sales for the year 1946, with a statement of the approximate percentage of those sales which were made in the eleven states comprising the Consolidated market.

- 991      b. A description of the principal products included in said total sales and in the sales in said eleven states.

We should appreciate your advising us at the pretrial conference on June 4 as to your views in this connection.

Sincerely yours,

JOHN F. SONNETT,  
*Assistant Attorney General.*

cc: John J. Morris, Jr., Esq., United States Attorney.

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## Plaintiff's Exhibit 10

Information requested by Department of Justice in letter dated May 29, 1917

## ITEM 1

Name of company	State of incorporation	Principal office	Location of physical facilities	General nature of business
Columbia Iron Mining Co	Utah	Geneva, Utah	Utah	Mining and sale of iron ore.
H. C. Wick Coke Co	Pennsylvania	Pittsburgh, Pa.	Pennsylvania	Mining and sale of coal.
Gerrard Steel Stripping Co	Delaware	Chicago, Ill.	Pennsylvania and Illinois	Manufacture and rental of wire tying machines and sale of wire.
Michigan Limestone & Chemical Co.	Michigan	Rogers City, Mich.	Michigan, Ohio, and New York	Quarrying and sale of limestone.
National Tube Co	New Jersey	Pittsburgh, Pa.	Pennsylvania, Ohio, Indiana	Manufacture and sale of tubular products.
Oil Well Supply Co.	do	Dallas, Tex.	Pennsylvania (stores in various locations, principally in Southwest and West)	Manufacture and sale of all country goods.
Oliver Iron Mining Co	Minnesota	Duluth, Minn.	Minnesota, Michigan, Wisconsin	Mining and sale of iron ore.
Pittsburgh Limestone Corp.	Pennsylvania	Pittsburgh, Pa.	Pennsylvania and Maryland	Quarrying and sale of limestone.
United States Coal & Coke Co.	West Virginia	do	Virginia, West Virginia, Kentucky, Illinois, and Indiana	Mining and sale of coal.
United States Steel Products Co.	Delaware	New York, N. Y.	Pennsylvania, Ohio, Illinois, Louisiana, Texas, California	Manufacture and sale of steel barrels, drums, light receptacles, and specialties.
Universal Exploration Co.	New Jersey	Birmingham, Ala.	Tennessee and New York	Mining and sale of zinc ore.

The foregoing comprise the operating subsidiaries of United States Steel Corp. engaged in the production or distribution of rolled steel products and the subsidiaries producing the raw materials going into said products, excluding the subsidiaries referred to in the answers to the interrogatories. There are, in addition, miscellaneous subsidiaries engaged in transportation and other activities shown on Schedule 1 hereto attached. United States Steel Corp. or its subsidiaries own all of the capital stock of the subsidiaries listed above and on Schedule 1 except as otherwise stated on Schedule 1.

993 SCHEDULE 1. MISCELLANEOUS SUBSIDIARIES OF UNITED STATES STEEL CORPORATION

Appollo Gas Company.  
 Bessemer and Lake Erie Railroad Company.  
 Birmingham Southern Railroad Company.  
 Bradley Transportation Company.  
 Carbon County Railway Company.  
 Carnegie Natural Gas Company.  
 Companhia Meridional de Mineracao.  
 Donora Southern Railroad Company.  
 Duluth, Missabe and Iron Range Railway Company.  
 Elgin, Joliet and Eastern Railway Company.  
 Etna and Montrose Railroad Company.  
 Gary Land Company.  
 Hannibal Connecting Railroad Company.  
 Isthmian Steamship Company.  
 Johnstown and Stony Creek Rail Road Company.  
 The Lake Terminal Railroad Company.  
 McKeesport Connecting Railroad Company.  
 The Newburgh and South Shore Railway Company.  
 Northampton and Bath Railroad Company.  
 Ohio Barge Line, Inc.  
 The Pittsburgh & Conneaut Dock Company.  
 Pittsburgh Steamship Company.  
 Seventy-one Broadway Corporation.  
 Tennessee Land Company.  
 Trotter Water Company.  
 Union Railroad Company.  
 Universal Atlas Cement Company.  
 Warrior & Gulf Navigation Company.  
 The Youngstown and Northern Railroad Company.

994

*Plaintiff's Exhibit 11*

INFORMATION REQUESTED BY DEPARTMENT OF JUSTICE IN LETTER  
 DATED MAY 29, 1947

ITEM 2

I. National Tube Company

A. The sales of National Tube Company for 1946 were \$144,-191,056. Sales to customers other than subsidiaries of U. S. Steel were \$97,409,266. Sales to customers other than subsidiaries of U. S. Steel in the eleven states of the so-called Consolidated market amounted to \$22,751,249, or 23.4%. Products sold to other sub-

subsidiaries were resold by them to their customers, excepting some products for their own use; with respect to Columbia Steel Company such sales were included in the sales figures furnished in its answers to interrogatories in this case; and with respect to Oil Well Supply Company the sales are included in the sales figures furnished below.

B. The principal products sold to customers (including Columbia Steel Company and Oil Well Supply Company for resale to customers), generally and in the eleven states, were tubular products, which are comprised of oil country goods, pressure tubing, mechanical tubing, standard pipe, line pipe, and miscellaneous tubular products.

## II. Oil Well Supply Company

A. The total sales of this company for the year 1946 were \$45,955,625, of which \$21,455,310, or 47%, were in the eleven states.

B. The principal products sold to customers generally and in the eleven states were: oil country goods in the form of drill pipe, casing and tubing; line pipe and gathering lines for long distance transportation of petroleum products; wire rope for drilling and other oil field operations; drilling engines and machinery, feed controls, hoists, traveling and crown blocks, sucker and pull rods, slush, oil and subsurface pumps, central pumping units for operating a number of wells from a single power source, portable pumps, swivels, packers, bits, slips, elevators, hoses, valves and other specially designed equipment used in oil and gas fields.

## III. United States Steel Products Company

A. Total sales for the year 1946 were \$19,418,550, of which \$10,680,203, or 53%, were in the eleven states.

B. The principal products sold generally and in the eleven states were: steel barrels, drums, light receptacles and other manufactured specialties.

997

*Plaintiff's Exhibit 12*

In the United States Circuit Court of Appeals for the Third Circuit

No. 6796 (March Term, 1938)

UNITED STATES STEEL CORPORATION, AMERICAN BRIDGE COMPANY,  
CARNEGIE-ILLINOIS STEEL CORPORATION (FORMALLY KNOWN AS  
CARNEGIE STEEL COMPANY, AND SUCCESSOR BY MERGER TO AMERI-

CAN SHEET & TIN PLATE COMPANY), THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY, AND TENNESSEE COAL, IRON AND RAILROAD COMPANY, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

PETITION FOR THE REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION

*To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:*

United States Steel Corporation, American Bridge Company, Carnegie-Illinois Steel Corporation, The American Steel and Wire Company of New Jersey, and Tennessee Coal, Iron and Railroad Company, corporations, allege and petition:

998. 1. An order to cease and desist was entered by the Federal Trade Commission (hereinafter called the "Commission") against your petitioners on the 21st day of July A. D. 1924. A copy of said order, marked Exhibit "A," is hereto attached and made a part hereof. By the said order your petitioners were directed to cease and desist:

(1) From quoting for sale or selling in the course of interstate commerce their rolled steel products known as plates, bars, structural shapes, sheets, tin plates, wire and wire products at Pittsburgh plus prices.

(2) From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

(3) From selling or contracting for the sale of or invoicing such steel products in the course of interstate commerce without clearly and distinctly indicating in such sales, or upon such contracts or invoices, how much is charged for such steel products f. o. b. the producing or shipping point, and how much is charged for the actual transportation of said products, if any, from such producing or shipping point to destination.

(4) From discriminating in the course of interstate commerce, either directly, or indirectly, in price between different purchasers of their rolled steel products sold for use, consumption or resale within the United States or any Territory thereof, or the

999 District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both; provided,

however, that nothing therein contained should prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition. In said order, it was also provided that the use by petitioners in the course of such interstate commerce of the system of Pittsburgh plus prices for their said steel products manufactured at and shipped from points outside of Pittsburgh should be deemed to constitute a violation of said order; that the use by petitioners in the course of such interstate commerce of any system similar to that of the Pittsburgh plus system should likewise be deemed to constitute a violation of said order; and that the practice by petitioners of selling or contracting for the sale of said products in the course of interstate commerce upon any other basing point than that where the products are manufactured or from which they are shipped, should be deemed to constitute a violation of said order.

1000 2. No proceeding has hitherto been had in this court or in any other court for the review of the aforesaid cease and desist order, either at the instance of your petitioners or of any other person affected thereby. The Commission has not hitherto taken any proceeding in this or any other court, or otherwise, to enforce or procure the enforcement of said order against your petitioners or any other person affected thereby, and the Commission has never entered any order in any respect modifying or rescinding said order.

3. Said order to cease and desist was filed in a proceeding by the Commission at its docket number 760, in which your petitioners, among others, were respondents. In the course of said proceeding, the Commission made a report in which it stated its Findings as to the Facts and Conclusion. A copy of said report, Findings as to the Facts and Conclusion is hitherto attached, marked Exhibit "B." and made a part hereof. Thereupon the Commission entered its aforesaid cease and desist order (Exhibit "A"). All of the proceedings before the Commission will more fully appear in the transcript of the record which is required to be certified and filed in this Court by the Commission upon the service upon the Commission of a copy of this petition for review.

4. This Court has jurisdiction of this petition to review under Section 5 (c) of the Federal Trade Commission Act, as amended by Public No. 447, 75th Congress, (S. 1077) entitled "An Act to amend the Act creating the Federal Trade Commission, 1001 to define its powers and duties, and for other purposes,"

(approved March 21, 1938), and under Section 5 (a) of said Public No. 447 (said Public Act No. 447 being hereinafter for convenience referred to as the "1938 Amendment") for the following reasons:

(a) Your petitioners are required by an order of the Commission to cease and desist from using a method of competition and certain acts and practices.

(b) United States Steel Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and resides within the Third Circuit, having its principal office in the City of Hoboken, State of New Jersey.

(c) American Bridge Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey; it resides and carries on business within the Third Circuit, having its principal office in the City of Hoboken, State of New Jersey, and having manufacturing plants and offices at various locations within said Circuit.

(d) Carnegie-Illinois Steel Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. At the time of the entry of said cease and desist order, its corporate name was Carnegie Steel Company, but this name was later changed to the present one by an amendment duly made to its charter or articles of incorporation. By 1002 agreement of merger entered into after the date of said cease and desist order, American Sheet & Tin Plate Company (one of the respondents in said proceeding before the Commission) was duly merged into and consolidated with Carnegie-Illinois Steel Corporation. Said Carnegie-Illinois Steel Corporation resides and carries on business within the third circuit, having its principal office in the City of Hoboken, State of New Jersey, and having manufacturing plants and offices at various locations within said circuit.

(e) The American Steel and Wire Company of New Jersey (which is the correct corporate name of the respondent named in the proceeding before the Commission as American Steel and Wire Company) is a corporation organized and existing under and by virtue of the laws of the State of New Jersey; it resides and carries on business within the Third Circuit, having its principal office in the City of Hoboken, State of New Jersey, and having manufacturing plants and offices at various locations within said Circuit.

(f) Tennessee Coal, Iron and Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Tennessee; at the time of the entry of said cease and desist order, the method of competition in question in said proceeding before the Commission was being used in the third

circuit, and Tennessee Coal, Iron and Railroad Company carries on business in said Third Circuit.

1003 (g) The said order of the Commission to cease and desist was served on petitioners before the date of the enactment of the 1938 Amendment to the Federal Trade Commission Act, and this petition is filed in this Court within sixty (60) days from the date of the enactment of the 1938 Amendment as provided in Section 5 (a) thereof.

5. The aforesaid order of the Commission was and is contrary to law, void, and of no effect and should be wholly set aside for the following reasons among others (the said reasons constituting the petitioners' assignments of error):

(a) The Commission exceeded its lawful power and authority in ordering the petitioners to cease and desist in the manner set out in said order.

(b) The enforcement of the said order of the Commission would deprive petitioners of their property without due process of law and of their constitutional and legal rights as guaranteed by the Fifth Amendment to the Constitution of the United States for the reasons:

(1) The enforcement of said order of the Commission would deprive your petitioners of their rights to meet competition of other producers of rolled steel products, and would be confiscatory in operation.

(2) Said order in requiring petitioners to cease and desist from selling rolled steel products "upon any other basing  
1004 point than that where the products are manufactured or from which they are shipped" would prevent petitioners from competing with other steel producers in areas where such other steel producers have manufacturing plants but in which areas petitioners do not have manufacturing plants. Such order would also prevent petitioners from selling their rolled steel products at the price f. o. b. the point of intended manufacture closest to the consumer, and later, for reasons of convenience or necessity, manufacturing and shipping such products from one of their manufacturing plants other than at such intended point of manufacture.

(3) Said order of the Commission destroys petitioners' lawful right to sell their rolled steel products upon their own terms and conditions, and it deprives them of their right to make usual and ordinary contracts for the sale of their property. Said order is therefore an arbitrary, unreasonable and capricious encroachment on petitioners' liberty and freedom of contract.

(4) Said order is phrased in such broad and general terms, and is so vague and indefinite in meaning, that it furnishes no guide to the petitioners as to the future conduct of their business, with the

result that petitioners have no means of knowing when they are in violation thereof.

1005 (5) Said order goes much further than would be reasonably necessary to correct the supposed evils found by the Commission to exist or to preserve rights of petitioners' competitors and the public.

(6) The Commission's cease and desist order has no real or substantial relation to the regulation or prohibition of unfair methods of competition in commerce, or of unfair or deceptive acts or practices in commerce.

(7) The Commission's cease and desist order has no real or substantial relation to the lessening of competition in commerce, or to a tendency to create a monopoly in any line of commerce.

(8) The order has been abandoned by the Commission and no longer has any validity. At the time said order was entered it had no basis in fact or in law and was unreasonable and arbitrary. The enforcement of said order would have injured competition and destroyed petitioners' rights to compete upon the same or similar terms and conditions as their competitors. It has never been practicable for your petitioners or others similarly situated to comply and your petitioners have not complied with, the provisions of said order (other than Paragraphs 2 and 3 thereof). The fact of such noncompliance has at all times been known to the Commission. Despite such knowledge of non-  
1006 compliance, the Commission has never taken any action for the enforcement of said order and has abandoned such order. The Congress has refused for many years, and particularly recently, to pass legislation urged upon it which would have established as a matter of law the principle sought to be applied and the results hoped to be obtained by the Commission through its said order. Thus the order, now almost 14 years old, has neither legislative nor administrative sanction, and by the non-action and refusal of Congress as aforesaid it has been clearly demonstrated that said order is contrary to public policy and the law of the land.

(9) The enforcement of the order at this time upon the record made prior to the year 1924 would, in view of changed conditions, deprive your petitioners of their right to a fair hearing. The Commission's findings as to the facts and the evidence adduced before the Commission all relate to a time preceding the entry of said order and not to conditions presently existing to which they are wholly inapplicable. Since the entry of said order, economic conditions and the practices and methods of competition (not only as they concern petitioners but as they concern petitioners' competitors and customers) have changed materially. The failure of the Commission to attempt to enforce said

1907 order has created the same situation for all practical purposes as would now exist if no order had been entered in 1924, but instead that now, in the year 1938, the Commission for the first time was entering its order based wholly upon the 1924 record. The entry of an order for the first time in 1938 based upon the 1924 record or, what amounts to the same thing, the making of the 1924 order automatically final and effective by the application of the provisions of the 1938 amendment without the right to review such order, would deprive petitioners of their right to a hearing upon the validity of said order in the light of present changed conditions, would deprive petitioners of their right to meet the present practices and methods of competition, and would otherwise be arbitrary, unreasonable, capricious and unlawful.

(10) The Commission, as expressly permitted by law, should have long since set aside its said order, but having failed to do so, it should set it aside prior to its filing with this Court the transcript of the record in the proceeding in which such order was entered. Such action by the Commission would give logical effect to its prior abandonment of the order and would give recognition to the fact that the record upon which such order was formulated is a "stale" record based upon past conditions, most of which have become non-existent. Unless the Commission sets aside its order while it still retains jurisdiction to do so, this Court should set aside such order for the reasons herein stated.

(11) The 1938 amendment provides a time when the aforesaid cease and desist order of the Commission shall become final, and provides heavy civil penalties for each violation of said order. Despite the aforesaid changed conditions and the aforesaid failure of the Commission to enforce said order, petitioners would nevertheless be subjected to such penalties with the resultant deprivation of property; such penalties could be enforced even though the Commission has made no attempt to obtain the enforcement of its order and even though it had previously determined that said order was erroneous or that it should not be enforced.

(c) The cease and desist order of the Commission is not supported or warranted by its Findings as to the Facts or by the evidence, and is contrary to law.

(d) The alleged acts of petitioners described and set forth in the Findings as to the Facts did not and do not constitute the use of unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. Neither do said alleged acts amount to a discrimination in price by petitioners between the purchasers of their rolled steel products in violation of Section 2 of the Clayton Act of October 15, 1914.

1009 (e) The Conclusions of the Commission upon which said order is based, as set forth in its Finding as to the Facts and Conclusion are erroneous. Neither the evidence nor the supposed facts as found by the Commission nor the law support or warrant the following conclusions of the Commission:

(1) That petitioners used unfair methods of competition in commerce in violation of the provisions contained in Section 5 of the Federal Trade Commission Act.

(2) That petitioners have been or are discriminating in price between the different purchasers of their rolled steel products, in violation of the provisions contained in Section 2 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", approved October 15, 1914 (herein for convenience referred to as the "Clayton Act").

(3) That petitioners' practice of quoting and charging Pittsburgh Plus Prices constitutes an unfair method of competition.

(4) That petitioners' practice of quoting and selling steel products at Pittsburgh Plus Prices and Delivered Prices constitutes an unfair method of competition.

1010 (5) That petitioners' practice of quoting and selling steel products upon a basing point other than that of a producing or shipping point constitutes an unfair method of competition.

(6) That alleged discriminations made under the Pittsburgh Plus System are not made for any of the purposes permitted by the Clayton Act.

(7) That petitioners' practices with respect to the Birmingham Differential in like manner constitute unfair methods of competition and constitute a discrimination within the meaning of the Clayton Act and are not made for any of the purposes permitted by the Clayton Act.

(f) The Commission's Findings of Facts are not supported by and are contrary to the evidence. In particular, the Commission erred in finding:

(1) That petitioner, United States Steel Corporation, is engaged in interstate commerce, or controls its subsidiaries, or dictates and controls the prices at which said subsidiaries sell the products which they manufacture.

(2) That petitioners discriminate in their prices by the use of the Pittsburgh Plus System.

(3) That petitioners' Pittsburgh Plus Prices substantially lessen competition, (a) among the steel users, (b) of their steel customers with petitioners, and (c) among the steel producers.

1011 (4) That petitioners' Pittsburgh Plus Prices adversely affect the public interest and are not made in good faith to meet competition.

(5) That the Pittsburgh Plus System itself is evidence that free competition does not exist, that the Delivered Price restrains competition, that competition is restrained by the Pittsburgh Plus System, and that there is no free operation of the law of supply and demand under the Pittsburgh Plus System.

(6) That discriminations made under the Pittsburgh Plus System are not made for any of the purposes permitted by the Clayton Act.

(7) That the Petitioners' Birmingham Differential Prices have the same effects as the Pittsburgh Plus Prices as above outlined.

(8) That the effect of such practices is:

First: To substantially lessen competition of southern and western consumers with eastern consumers and Pittsburgh consumers particularly;

Second: To substantially lessen competition of western consumers with such of petitioners' subsidiaries as are competitors with such consumers in that such subsidiaries are charged 1012 only the Pittsburgh base price while consumers are compelled to pay the higher and so-called discriminatory price;

Third: To substantially lessen competition among all the producers in the United States of the various rolled steel products in that all steel producers charge the same f. o. b. Pittsburgh price for the steel which they manufacture in the city of Pittsburgh and also charge the same f. o. b. Pittsburgh price plus freight from Pittsburgh to destination for the steel which they manufacture outside of Pittsburgh except in Birmingham where they charge the Birmingham price. According to the Commission's findings, without the maintenance by petitioners of this practice which is termed the "Pittsburgh Plus Practice" and the Birmingham price, the other producers of rolled steel products would be unable to maintain said prices.

Petitioners ask leave to assign as error such other findings of fact, conclusions and rulings of the Commission as they may deem advisable, within a reasonable time after the Commission has filed the transcript of the record with your Honorable Court, as hereinafter prayed for.

Wherefore your petitioners respectfully pray that 1013 your Honorable Court review the aforesaid cease and desist order of the Federal Trade Commission, and all of said proceedings, findings, and conclusions of said Commission in this case, and they further pray:

(1) That a certified copy of this petition be forthwith served by the Clerk of this Court upon said Federal Trade Commission

and that said Commission may be required, in conformity with the statute, forthwith to certify and file in this Court a transcript of the entire record in the proceeding aforesaid, including all the evidence taken and the report and order of the Commission.

(2) That the said cease and desist order of the Commission be reviewed by this Court and that said order be set aside.

(3) That petitioners have such further and other relief in the premises as to this Honorable Court may seem just and proper.

UNITED STATES STEEL CORPORATION,

By B. F. FAIRLESS, *President*.

AMERICAN BRIDGE COMPANY,

By EUGENE H. HEALD, *Vice President*.

CARNEGIE-ILLINOIS STEEL CORPORATION,

By J. L. PERRY, *President*.

THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY,

By C. F. HOOD, *President*.

TENNESSEE COAL, IRON AND RAILROAD COMPANY,

By THOS. CHALMERS, *Vice President*.

NATHAN L. MILLER,

15 Broad Street, New York City

WILLIAM BEYE,

747 Union Trust Building, Pittsburgh, Pa.

JOHN J. HEARD,

HENRY EASTMAN HACKNEY,

REED, SMITH, SHAW & McCLAY,

747 Union Trust Building, Pittsburgh, Pa.

*Counsel for Petitioners.*

K. B. HALSTEAD,

71 Broadway, New York, N. Y.

*Of Counsel for United States Steel Corporation.*

1015 COMMONWEALTH OF PENNSYLVANIA,

*County of Allegheny, ss:*

B. F. Fairless, being first duly sworn, deposes and says that he is President of United States Steel Corporation, one of the petitioners in the foregoing matter, that he has read the foregoing petition and knows the contents thereof, and that the same is true and correct as he is informed and verily believes; and that he subscribed said petition in his capacity as President of United States Steel Corporation, being hereunto duly authorized.

B. F. FAIRLESS.

Sworn and subscribed before me this 16th day of May 1938.  
[NOTARIAL SEAL]

MARGARET S. PURSELL,  
*Notary Public.*

My commission expires at the end of next Session of Senate.

1016 COMMONWEALTH OF PENNSYLVANIA,  
*County of Allegheny, ss:*

Eugene H. Heald, being first duly sworn, deposes and says that he is Vice President of American Bridge Company, one of the petitioners in the foregoing matter, that he has read the foregoing petition and knows the contents thereof, and that the same is true and correct as he is informed and verily believes; and that he subscribed said petition in his capacity as Vice President of American Bridge Company, being hereunto duly authorized.

EUGENE H. HEALD.

Sworn and subscribed before me this 16th day of May 1938.  
[NOTARIAL SEAL]

MARGARET S. PURSELL,  
*Notary Public.*

My commission expires at the end of next Session of Senate.

1017 COMMONWEALTH OF PENNSYLVANIA,  
*County of Allegheny, ss:*

J. L. Perry, being first duly sworn, deposes and says that he is President of Carnegie-Illinois Steel Corporation, one of the petitioners in the foregoing matter, that he has read the foregoing petition and knows the contents thereof, and that the same is true and correct as he is informed and verily believes; and that he subscribed said petition in his capacity as President of Carnegie-Illinois Steel Corporation, being hereunto duly authorized.

J. L. PERRY.

Sworn and subscribed before me this 16th day of May 1938.  
[NOTARIAL SEAL]

MARGARET S. PURSELL,  
*Notary Public.*

My commission expires at the end of next Session of Senate.

1018 COMMONWEALTH OF PENNSYLVANIA,  
*County of Allegheny, ss:*

C. F. Hood, being first duly sworn, deposes and says that he is President of The American Steel and Wire Company of New Jersey, one of the petitioners in the foregoing matter, that he has read the foregoing petition and knows the contents thereof, and that the same is true and correct as he is informed and verily believes; and that he subscribed said petition in his capacity as

President of The American Steel and Wire Company of New Jersey, being hereunto duly authorized.

C. F. HOOD.

Sworn and subscribed before me this 16th day of May 1938.

[NOTARIAL SEAL]

MARGARET S. PURSELL,

Notary Public.

My commission expires at the end of next Session of Senate.

1019 STATE OF ALABAMA,

Jefferson County; ss:

Thos. Chalmers, being first duly sworn, deposes and says that he is Vice President of Tennessee Coal, Iron and Railroad Company, one of the petitioners in the foregoing matter; that he has read the foregoing petition and knows the contents thereof, and that the same is true and correct as he is informed and verily believes; and that he subscribed said petition in his capacity as Vice President of Tennessee Coal, Iron and Railroad Company, being hereunto duly authorized.

THOS. CHALMERS.

Sworn and subscribed before me this 16th day of May 1938.

[NOTARIAL SEAL]

ROBERT S. SMITH,

Notary Public, Jefferson County, State of Alabama.

My commission expires January 5, 1941.

1110-A A true copy.

[SEAL]

WM. R. ROWLAND,

Clerk.

1112

Plaintiff's Exhibit 13.

PETITION FOR A CLARIFICATION OF THE ORDER UNDER REVIEW

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of United States Steel Corporation, American Bridge Company, Carnegie-Illinois Steel Corporation, the American Steel and Wire Company of New Jersey, and Tennessee Coal, Iron and Railroad Company, the petitioners above named, respectfully represents:

First: Your petitioners commenced this proceeding on May 8, 1938, by filing their Petition for Review under Section 5 of the Federal Trade Commission Act as amended (15 U. S. C. 45), by which they have prayed that your honorable Court shall review and set aside, in whole or in part, the cease and desist order entered by the respondent Federal Trade Commission, at its docket No. 760, on July 20, 1934.

Second: The record of the proceeding before the respondent Commission is an exceptionally voluminous one; and it includes over eighteen thousand typewritten pages of testimony taken at hearings held during a period of years before July 20, 1924, and in addition some thirty thousand pages of documentary exhibits received in evidence during such hearings. None of the officers or legal counsel who represent your petitioners at the present time has any substantial knowledge of the testimony and exhibits aforesaid.

Third: The cease and desist order under review was based upon certain written "Findings as to the Facts" and a written "Conclusion" of the respondent Commission, which were entered at the same time on its records and are reproduced in Exhibits A and B attached to the Petition for Review herein and of which the presently material portions may be summarized as follows:

1. That, during a period of many years before 1924, your petitioners and their predecessors had been engaged in the business of manufacturing such rolled steel products as plates, bars, structural shapes, sheets and tin plate, or wire and wire products, at plants or mills situated in or near the Cities of Pittsburgh, Pennsylvania; Chicago, Illinois; Birmingham, Alabama; Minneapolis, Minnesota and elsewhere, for sale throughout the United States, and had adopted and generally applied a method of pricing and selling such products which was known as "Pittsburgh Plus."

2. That, under the "Pittsburgh Plus" method, the price charged to and paid by any customer at any point in the United States for any order of such steel products, whether manufactured at Pittsburgh or at some other place in the United States, was fixed at the base price thereof in the City of Pittsburgh, plus an amount equivalent to what the railroad freight charges would have been from Pittsburgh to the customer's destination, if such products had been shipped from Pittsburgh.

3. That the "Pittsburgh Plus" method tended to increase artificially the prices of rolled steel products in all those areas which surrounded steel manufacturing centers other than Pittsburgh; and that this tendency was peculiarly effective in the

1114 areas surrounding the steel manufacturing centers of Chicago, Illinois, and Birmingham, Alabama, because the costs of producing rolled steel products in these two places were and had been (so the Commission found) much lower than in the Pittsburgh manufacturing district.

4. That this artificial increase of the prices of such steel products in such other areas as the Chicago and Birmingham industrial districts, and at many other places, was an unfair and unreasonable discrimination in favor of those who bought and used such steel

products in or near Pittsburgh and against their competitors who bought and used such products in or near other steel manufacturing centers, and generally against and amongst all such of those competitors who were engaged in business at any point or points remote from Pittsburgh.

Fourth: After the entry of the Order of the respondent Commission which is here under review, the petitioners discontinued the "Pittsburgh Plus" method of selling, which was described in the Commission's findings.

Fifth: Petitioners have been advised by counsel, and they believe that, under the decisions of the Supreme Court of the United States in *Corn Products Refining Co. v. Federal Trade Commission*, 324 U. S. 726; 89 L. Ed. 977, and *Federal Trade Commission v. A. E. Staley Mfg. Co.*, 324 U. S. 746; 89 L. Ed. 989, both handed down on April 23, 1945, the old "Pittsburgh Plus" method of pricing would, were it now in effect, be unlawful as a violation of the Robinson-Patman Amendment to the Clayton Act—the Act of June 19, 1936, c. 592; 49 Stat. 1526; 15 U. S. C. 13.

Sixth: Since the issue of the legality of the old "Pittsburgh Plus" method of selling has been determined by the decisions in the *Corn Products* and *Staley* cases, and since this method of selling has been discontinued by petitioners, it will not be necessary to prosecute this case further before the Court, if certain ambiguous provisions of the Order can be clarified or modified in such manner as to remove any doubt concerning petitioners' rights to meet existing competition, in the manner hereinafter described.

Seventh: The Order requires petitioners, in paragraph 1 thereof, to cease and desist:

"From quoting for sale or selling \* \* \* their rolled steel products \* \* \* at Pittsburgh Plus prices."

This paragraph further states that by quoting for sale or selling at Pittsburgh Plus prices is meant respondents' practice of

"\* \* \* quoting and selling said products manufactured at and shipped from points outside of Pittsburgh at their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh."

Petitioners are advised that it was the principal purpose of the Order under review to require petitioners to cease and desist from the old "Pittsburgh Plus" method of selling their products. This, petitioners have done.

Eighth: Paragraph 2 of the Order requires your petitioners to cease and desist:

"From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped."

Petitioners desire to be free to sell their products at delivered prices which are normally computed by adding to the current price base at a point at or near the place of manufacture, applicable charges for extras and the applicable transportation rate from that point to the customer's place of delivery; and where it is necessary to meet the lower delivered price of a competitor, petitioners desire to be free to reduce the delivered price thus computed to a price as low as that charged by the competitor, particularly in those cases in which petitioners may desire to sell their products at some place which is nearer to the manufacturing plant of some competitor than to any such plant of the petitioners, or in which, for any other reason, petitioners are required to reduce their delivered price to meet the lower delivered price of a competitor.

It will tend to remove any doubt concerning petitioner's right to meet competition in the manner aforesaid if the Commission be required to clarify its position in the case, and in particular to state upon the record whether, if the Order under review be enforced according to its true intent and purpose, your petitioners

will be permitted to lower their delivered prices to meet lower delivered prices quoted or charged by any of their competitors and even though this involves a computation 1117 any such lower delivered price by adding to a competitor's price base, the published freight rate from such competitor's basing point at his point of production to the buyer's destination.

Since the Order is ambiguous in that it is not plain whether thus meeting a competitor's price is to be deemed quoting for sale or selling upon any other basing point than that where the products are manufactured or from which they are shipped, petitioners desire to have the Order clarified in this regard.

The provisions of paragraph 3, in substance, require petitioners to show upon their invoices how much is charged for such products f. o. b. the producing or shipping point and how much is charged for the actual transportation of such products from the producing or shipping point to destination.

Paragraph 4 of the Order prevents discrimination in prices between different purchasers of the rolled steel products described where the:

"... effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both;

provided, however, that nothing herein contained shall prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition."

Under this language of the Order, it would be clear that petitioners are free to make such differences in price as do not substantially lessen competition and to make differences in price in the same or different communities when it is necessary to meet competition, but for the subsequent language of paragraph 4, which provides:

"\* \* \* The use by respondents in the course of such interstate commerce of the system of Pittsburgh Plus prices \* \* \* (or) of any system similar to that of the Pittsburgh Plus system shall \* \* \* be deemed to constitute a violation of this order. The practice by respondents of selling or contracting for the sale of said products in the course of interstate commerce upon any other basing point than that where the products are manufactured or from which they are shipped, shall be deemed to constitute a violation of this order."

Your petitioners are advised and believe that the methods of selling their products as aforesaid which petitioners desire to be free to pursue are entirely lawful and are therefore not subject to be condemned or prohibited by order of the respondent Commission; but that, nevertheless, were the Order under review permitted to become final and conclusive, its language aforesaid might hereafter be asserted to prohibit such methods. It is for that reason only that your petitioners believe it necessary to proceed further in this case.

Ninth: If the respondent Commission will state upon the record of this case that it does not contend that differences in price which do not substantially lessen competition and the meeting of competition in the manner hereinbefore set forth are in violation of the true intent of the Order under review, and if the wording of said Order may be clarified, by agreement of the parties or by order of the Court, in such manner as to relieve its ambiguity upon this point, your petitioners desire to discontinue this proceeding. Such an outcome is desirable because it would, by clarifying and interpreting the Order under review, settle the principal questions which remain at issue in the case, and because it would relieve the parties and the Court of the burdens of examining the thousands of pages of testimony and exhibits contained in the record—a record made before the respondent Commission more than

twenty-two years ago, of which the contents are familiar to no person now concerned in the case, and which must have been devoted in large part to a study of a point of law which has since been settled by the two decisions aforesaid of the Supreme Court, and of a method of selling which has since been discontinued.

Tenth: The Court has reserved for further consideration the matter of allowing the parties adequate periods of time within which to examine the record certified and filed by the Commission, to settle the form and contents of the printed Record to be presented to the Court, and otherwise to proceed with the case. By an Order entered on November 7th, 1945, and amendments thereto, the Court has limited the time within which your petitioners may, in the absence of special allowance by the Court,

make application for leave to adduce such additional evidence as they may desire to adduce in this proceeding.

Since, if it be granted, this present petition may make unnecessary the settlement and printing of the record aforesaid, or the presentation of additional evidence, or any similar proceedings in this case, your petitioners respectfully ask that the time within which the parties shall be required to take other proceedings in the case shall be further extended until the matters raised by this petition shall have been determined, and for such period thereafter as shall then appear to be necessary and reasonable.

Wherefore, your petitioners respectfully pray:

1. That the respondent Federal Trade Commission be required to answer this petition and to declare of record whether its cease and desist Order under review in this case is or is not intended to prevent petitioners from charging different prices which do not substantially lessen competition or from meeting competition in the manner set forth in this petition;

2. That in the event the respondent Commission shall declare in its answer that the Order aforesaid is not intended so to prevent petitioners from charging different prices which do not substantially lessen competition or so meeting competition, by agreement between the parties or upon order of this Court said Order under review shall be clarified; and that the Court shall enter a final decree in this case affirming said Order as so clarified;

3. That the times within which the parties shall be required to take other proceedings herein shall be extended during the pendency of this petition and for such period thereafter as shall be reasonable;

4. That petitioners have such other and further relief as shall, to your honorable Court seem meet;

